Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-~~7~~8-1015

JOHN P. BALDWIN, et al.,
Petitioners,

v.

CRAIG MILLS, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78——

JOHN P. BALDWIN, Individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; BRUCE M. BRYAN; JULIAN DURANT; JULIAN GIBSON; THEODORE GIBSON; A. L. HUGHES; KIRBY REICHMANN, Individually and claiming to be the Church Session of the Madison Presbyterian Church in Madison, Florida;

Petitioners,

v.

CRAIG MILLS; H. SAVELY MCQUAGGE; Trustees of the Presbytery of Florida; FRANK L. ELVERY, RICHARD L. SCOGGINS, C. FRANKLIN BEALL, LOUISE EYSTER, REEVES BOWEN and FRED MCGEHEE, as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; HENRY RAGANS and OSCAR BECK, JR., as and constituting the Session of the Madison Presbyterian Church in Madison, Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

The Petitioners, John P. Baldwin, et al., pray that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of the State of Florida rendered in these proceedings on July 20, 1978.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Florida appears at Appendix A, *infra*, pp. A-1 to A-16 and is reported at 362 So.2d 2. The opinion of the First District Court of Appeals appears at Appendix B, *infra*, pp. B-1 to B-22 and is reported at 344 So.2d 259. The judgment and order of the Circuit Court of the Second Judicial Circuit in and for Madison County, Florida, appears at Appendix C, *infra*, pp. C-1 to C-12 and is unreported.

JURISDICTION

The order or judgment of the Supreme Court of the State of Florida denying the petition for rehearing was entered on September 28, 1978. See Appendix A, p. A-16 *infra*. This petition for a writ of certiorari was filed less than ninety (90) days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C., § 1257(3).

QUESTION PRESENTED

Whether the continued recognition of the implied trust theory established in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871), has resulted in the "establishment" of hierarchical churches contrary to the First Amendment of the United States Constitution to the extent that local churches connectionally affiliated with hierarchical denominations are faced with an unconstitutional burden in their property transactions since "neutral principles of law" applicable to all other property transactions, regardless of the nature of the entity involved, are not uniformly applied?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. Const., Amend. XIV, Sec. 1:

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

When the Madison Presbyterian Church ("MPC") was formed in the year 1840, it was spiritually affiliated with a Presbyterian denomination known as the Presbyterian Church in the United States of America and with the Presbytery of Georgia. The Presbytery of Florida was subsequently formed from the Presbytery of Georgia as a Presybtery of the Presbyterian Church in the United States of America. On March 14, 1851 the "Trustees of the Madison Presbyterian Church at Madison" acquired the property upon which the Sanctuary and educational building now stand.[1] In the year 1861, the Presbytery of Florida *unilaterally withdrew* and disassociated itself from the Presbyterian Church in the United States of America and participated in the formation of the Presbyterian Church in the Confederate States of America, which was the forerunner of the Presbyterian Church in the United States ("PCUS").

The unilateral withdrawal of the Presbytery of Florida from the Presbyterian Church in the United States of America in 1861 was precipitated by polictial activism and intrusion into secular affairs on the part of the Presbyterian Church in the United States of America at the time of the Civil War.

The government of MPC, as far as is known, has always been conducted according to the principle of majority rule. The Petitioners constituted a majority of the Session and a majority of the Trustees of MPC, elected by a majority of the congregation of said church,

[1] Additional property has been acquired subsequent to the time of the affiliation of MPC with PCUS.

at the time of the actions complained of by Respondents. MPC, since 1840, has continually remained in existence as an unincorporated church with title to all of the property of the church held by trustees elected by a majority of the congregation for the benefit of the congregation.

No mention whatsoever of PCUS or the Presbytery of Florida is found in any of the muniments of title to the real property of MPC. Neither PCUS, the Synod of Florida nor the Presbytery of Florida has ever contributed any property to MPC nor provided any funds with which the property of said church was acquired. The only funds provided by the Presbytery of Florida which have had any connection with MPC were payments made sometime around 1870 to the Pastor of that church for his missionary work with other churches.

On May 20, 1973, the congregation of MPC, by resolution adopted on a vote of 74-29 terminated its spiritual affiliation and severed its relationship with the Respondents.

The majority of the members of MPC considered the relationship between PCUS and MPC that of a spiritual nature only and no contracts of any kind bound them legally to PCUS. From the time of the adoption of the resolution on May 20, 1973 through and including the time of the filing of the complaint by the Respondents in this cause, there had been no change whatsoever in the manner in which the church property had been used and none was contemplated.

The Petitioners did not seek to invoke the jurisdiction of the civil court but were continuing in their normal tradition of worship as determined by a majority of those members participating in the same manner as had been done since 1840, long before PCUS had any connection with the MPC whatsoever.

Respondents filed a complaint in the Circuit Court of the Third Judicial Circuit in and for Madison County, Florida, on August 7, 1973, seeking injunctive relief. The foundation of the Respondents' complaint was an alleged "trust originally imposed upon said property (of MPC) for the promulgation of the trusts and doctrines of the PCUS."

The Petitioners answered denying that Respondents were entitled to any of the relief prayed for on the grounds that:

1. no *legal* affiliation has ever existed between MPC and PCUS;

2. the property of MPC is not impressed with any trust, express or implied, in favor of the Respondents or PCUS;

3. Respondents were attempting to embroil the civil judiciary in questions of ecclesiastical law and polity;

4. the relief sought by Respondents was that of judicial action in violation of the First and Fourteenth Amendments to the Constitution of the United States of America, and in violation of Article I, Sections 2, 3 and 9 of the Constitution of Florida; and

5. even if a civil court were not constitutionally prohibited from delving into questions of ecclesiastical law and polity, an examination of such questions would show that Respondents have no rights of ownership, possession or control of any of the property of MPC.

Petitioners also counterclaimed, praying that, among other things, Respondents be enjoined from interfering with the Petitioners and the majority of the congregation of MPC in their religious worship and with their use, enjoyment and control of the property of the church.

The case proceeded to non-jury trial on January 23 and 24, 1975 in the Madison County Courthouse at Madison, Florida.

On May 19, 1975, after concluding that the property of MPC was impressed with an implied trust in favor of PCUS, the trial judge entered a final judgment granting the full measure of relief sought by the Respondents and denying Petitioners' counterclaim.

On June 11, 1975, the Petitioners filed a notice of appeal challenging the final judgment as clearly contrary to the evidence and the law. Error was predicated primarily upon the trial court's failure to consider Petitioners' defenses and Petitioners' claim that the final judgment was based upon determinations which were constitutionally improper and factually incorrect.

The District Court of Appeal of the State of Florida, in and for the First District, in its opinion filed March 25, 1977 and reversed the final judgment of the trial court and remanded the cause with directions to enter judgment in favor of the Petitioners. The District Court held that MPC owned the primary church property prior to the foundation of PCUS and no muniment of title indicated any interest of PCUS in the property of MPC. The petition for rehearing filed by Respondents was denied by the District Court on April 26, 1977.

Respondents then filed a petition for Writ of Certiorari to the District Court of Appeal, in the Supreme Court of Florida. The Supreme Court of Florida, on November 14, 1977, denied the petition for Writ of Certiorari stating that it was without jurisdiction to grant it; however, following a petition for rehearing, the Supreme Court of Florida, on January 20, 1978, granted the petition for rehearing and issued the Writ of Certiorari.

On July 20, 1978, the Supreme Court of Florida quashed the opinion of the District Court of Appeal, First District, determining that an implied trust existed in the property of MPC in favor of PCUS. The petition for rehearing was denied on September 28, 1978.

Petitioners now seek this Writ to determine whether the action of the Supreme Court of Florida violated the First Amendment, as applied to the states through the Fourteenth Amendment.

REASONS FOR GRANTING WRIT

Although the rule of *Watson* v. *Jones*, 80 U.S. (13 Wall) 679 (1871), has been stated, modified, explained and amended for more than 100 years it still fails to provide an adequate definitive method for civil courts to dispose of church property disputes according to the classification established by it. The *Watson* implied trust rule applicable to hierarchical church disputes requires an analysis by a civil court of the polity of the religious organization involved in the controversy. If, from that examination, the civil court determines that the general organization involved consists of a hierarchy of eccelesiastical tribunals, the civil court is mandated to grant the power of civil law to the decision of the ecclesiastical court. The apparent rationale of the *Watson* rule is to avoid the necessity of the involvement of civil courts in religious disputes in violation of the First Amendment of the United States Constitution. However, the obvious infirmity of this rule is the imposition upon the civil court of the necessity of inquiring into the religious organization to determine its polity. Such an inquiry by the civil court inevitably results in the necessity of the court deciding questions of religious doctrine and practice. Examination by a civil court of ecclesiastical procedure, structure and methods of resolving internal doctrinal disputes, notwithstanding that the doctrines or beliefs themselves are not judicially examined, is nevertheless a constitutionally improper inquiry by a civil court. For when a civil court examines and classifies the structure and procedure of a religious organization, it effectively "establishes" and passes upon the validity

of a particular religion, contrary to the First Amendment.

The *Watson* classification technique fails to allow for subsequent inquiry into the structure of a religious organization in light of its generalized conclusion. This resulted in the trial court's failure to consider further and more detailed inquiry into denominational church polity and consideration of specific evidence as to the role of the church in its handling of a particular property dispute. Petitioners, in the trial court, offered substantial evidence showing that, while the Presbyterian denomination had been classified as hierarchical in nature, it was, in fact, congregational with regard to its treatment and consideration of property ownership. However, as a result of the clear pronouncement of *Watson*, that courts should not become embroiled in religious controversy, the trial court, approved by the Supreme Court of Florida, totally ignored the evidence presented by Petitioners, a substantial portion of which was uncontradicted, reflecting the congregational nature of the treatment of property by PCUS.

The classification scheme of the *Watson* rule contains two major flaws—one of which is factual and the other, constitutional: (1) the assumption that, as in the case of Presbyterian organizations whose ecclesiastical government consists of a hierarchy of tribunals, such tribunals have been granted absolute authority over individual churches in all matters, both spiritual and temporal; and (2) most importantly, the classification of the polity of a religious organization as either "congregational" or "denominational" is itself an ecclesiastical question, the necessity for the resolution of which is obviated by the application of "neutral principles of law" developed in this Court's subsequent decisions. *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440

(1969), 396 U.S. 1041 (1970), *cert. denied. Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg*, 249 Md. 650, 241 A.2d 691 (1968), *vacated and remanded*, 393 U.S. 528, *reaffirmed*, 254 Md. 162, 254 A.2d 162 (1969), *appeal dismissed*, 396 U.S. 367 (1970). The basic premise of the *Watson* rule—that a separation of church and state must be maintained and that civil courts may not decide ecclesiastical questions—is as viable today as it was in 1871. It is the ill-founded classification technique that has failed to provide a method of resolving church property disputes in accordance with First Amendment principles.[2] The primary fault of the *Watson* rule is the requirement that civil courts delve into ecclesiastical questions and polity just deeply enough to violate the First Amendment, but not with sufficient depth to determine what ecclesiastical law actually provides regarding property ownership and control within the denomination.

Thus, the affirmance by the Supreme Court of Florida of the trial court's unquestioning acceptance of the nature of the Presbyterian hierarchy, based upon the *Watson* rule, without inquiry into the structure, organization and procedure of PCUS underscores the importance of the constitutional problem with the *Watson* rule and the need for clarification by this Court of the proper principles of law to be applied.

Of course, the simplest method of disposition of this case is to avoid further controversy, accept the broad-brush prior determinations and classify this case as a common "congregation versus denomination" property dispute to be summarily filed away with other cases in that category.

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[2] The vast number of continuing church property disputes and the varying results belie the validity of the *Watson* rule. See Annot., *Determination of Property Rights Between Local Church and Parent Church Body: Modern View*, 52 A.L.R.3d 324 (1973).

If certiorari is granted, Petitioners would show to the Court that the historical background and other factual circumstances surrounding this case are unique and stand out in sharp contrast to the facts upon which prior cases, in the area of church property disputes, have been decided. The Petitioners presented substantial evidence to the trial court which undermined the factual assumptions upon which previous decisions in this area are premised. There is no indication in other decisions that the courts were afforded the benefit of expert testimony and other evidence showing the factual fallacies underlying established "rules" for resolving hierarchical church property disputes Moreover, there is no indication in previous cases that the evidence converged to show a factual situation in which no funds or property were contributed by the denomination, no reference to the denomination is found in any muniment of title to the local church property, the local church came into existence prior to the founding of the denomination and the denomination and those purporting to represent it had, by word and deed, disavowed respect for the *Watson* rule. Petitioners' arguments are deserving of careful judicial scrutiny because they are not merely standardized assertions to which standardized rules and precedents can be applied.

The difficulty in the application of the *Watson* rule is vividly portrayed in the evidence presented to the trial court below, which the trial court totally disregarded, accepting as a basic premise the categorical correctness of the *Watson* rule. No consideration was made of the provision of the Book of Church Order, § 5-1,[3] which defines the "congregation" of a church as a body which ". . . consists of all the communing members on the

[3] *The Book of Church Order*, Presbyterian Church in the United States, Fourteenth Printing, 1972 ("BCO"), Plaintiffs' Trial Exhibit 1.

active role of a particular church." No power is given to the Presbytery, Synod or General Assembly to designate or determine the "congregation" of an individual church. The congregation of MPC was in existence before either the Presbytery of Florida or PCUS came into being. It is thus manifest that the congregation of MPC does not require or allow any definition or designation by the Respondents. The Respondents, Beck and Ragans, claim to be a majority of the Session of MPC having been appointed by the Presbytery. The BCO contains no provision or authority for the Presbytery to appoint members of the Session. The authority to determine the Session is set forth in BCO, § 23-2 which provides "the government of God's people in the church is representative. The right of God's people to elect their officers is *inalienable*. Therefore, no person can be placed over a church as pastor, associate, ruling *elder* or deacon, without the election of that church." (emphasis supplied) BCO, § 15-1, states: "The church Session consists of the pastor (an associate pastor) and the duly elected and installed ruling elders currently on active service in that congregation . . .", and BCO, § 29-1, sets out the procedure for the election of the ruling elders.

No allegation has ever been made by any of the Respondents that the Respondents, Beck and Ragans, were elected as members of the church Session in accordance with BCO. Respondents, at no time, have shown that either the Presbytery of Florida or the Administrative Commission of the Presbytery have any power, right or interest in the property of the congregation of MPC, except as has been judicially imposed by the *Watson* rule.

Petitioners have been puzzled throughout this entire judicial inquiry as to the apparent conclusive applicability of the BCO, when Chapter One of the BCO is entitled "The Nature and Extent of Church Power" and contains the following provision: BCO, § 1-2. "The pow-

er which Christ has given his church is holy, moral and spiritual, and constitutes the church a kingdom and government distinct from the civil commonwealth . . ." Indisputably, civil rights of ownership and control of property are not "holy," "moral" or "spiritual." Chapter Fourteen of the BCO, entitled "Jurisdiction of Church Courts," clearly limits the scope of the ecclesiastical tribunals—BCO, § 14-1—"Church courts are altogether distinct from the government of the state and *possess no civil jurisdiction* or power to inflict civil penalties." (emphasis supplied) Respondents have asked for, and the courts below have granted to, an ecclesiastical tribunal the power to decide property rights under civil law—a power which is expressly denied to the Respondents by the BCO. The only bodies in this cause which have status under civil law are the trustees of MPC and the congregation, which the trustees serve. BCO, § 6-1, relating to the functions of the trustees of unincorporated churches provides that: ". . . in the fulfillment of their duties such trustees shall be subject always to the authority and shall act *solely* under the instructions of the congregation which they serve as trustees." (emphasis supplied)

The Supreme Court of Florida allowed the conclusion that the denomination has the power to determine who is the "congregation." This ruling totally subverts the principle of majority rule on which all other action of the church hierarchy is based. If the congregation and its trustees (who are elected by a majority vote of the congregation and act by majority vote) are empowered under the BCO to own and control all church property, how can another body which is without power with regard to the control of church property overrule the action of a majority of those vested with power to act? Obviously, the *Watson* rule disregards basic fundamental fairness in its stereotyped studied avoidance of involvement in the decisions of ecclesiastical courts. The *Watson* rule

seemingly says that it is permissible to step into the water far enough to get your feet wet but no further! This rule has resulted in the "establishment" of PCUS when no opportunity is granted to show that the hierarchy has no right to control property which has never belonged to it.

The specialized treatment with regard to property ownership accorded hierarchical churches by this Court's continued recognition of the implied trust theory grants to hierarchical churches power which they do not otherwise have. If they had such power, in fact, rather than by this Court's sanction why have they not then specifically directed the local churches by hierarchical mandate to "structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Hull*, at 449. No compelling reason or constitutional requirement exists for the continued treatment of hierarchical churches in a manner separate and apart from the treatment accorded all other property owners.

Petitioners have no quarrel with this Court's decisions with regard to issues of internal church polity or questions of faith and doctrine. *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976). *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94 (1952). These matters obviously must receive deference from civil courts to the decisions of the ecclesiastical hierarchy since these are ecclesiastical questions, but deference to decisions of ecclesiastical courts on property ownership which is totally controlled by civil law in all other instances constitutes an unwarranted protection not authorized by the First Amendment. This is particularly true where, as in the instant case, the BCO, § 14-1 specifically states that PCUS church courts "possess no civil jurisdiction."

The implied trust theory created in *Watson* cannot be described in any manner other than as a "legal fiction".

A consideration of trust law applicable to all situations other than hierarchical church property disputes in no way reflects any recognition of this theory. The law generally divides trusts into either "express" trusts or "implied" trusts. No express trust has arisen in this case, because, as noted previously, none of the conveying instruments contain any reference whatsoever to the Presbytery of Florida or PCUS.

If an implied trust has been imposed upon the property of MPC in favor of PCUS under general trust law, it must be either a "constructive" trust or a "resulting" trust.

A constructive trust arises to avoid unjust enrichment as a result of fraud, duress or mistake as where, for instance, a party not named in the conveying instrument has provided all or part of the funds by which the property was acquired. As previously noted, neither the Presbytery of Florida nor PCUS provided any funds with which any of the property of MPC was acquired, therefore, no constructive trust has arisen.

A resulting trust arises to accomplish the presumed intent of the parties, as where parties intend that the holder of the title to property is to hold that property in behalf of another. No evidence was presented that any of the properties acquired by MPC were intended to be conveyed for the benefit of any group other than the congregation of MPC. In fact, the property of MPC, which is of principal value and importance in this controversy, was conveyed to MPC ten years before PCUS came into existence. At the time of the affiliation of MPC with PCUS, no contracts, conveyances or any other documents were executed then, or at any time thereafter, acknowledging or granting an interest in the property of MPC to PCUS, therefore, no resulting trust could have arisen. The conclusion of the trial court, approved by the Supreme Court of Florida, that an implied trust

in the property of MPC has arisen in favor of PCUS is in derogation of neutral principles of law established for use in property disputes generally.

The doctrine referred to as "neutral principles of law" was first enunciated by this Court in *Hull* and its application was sanctioned in *Sharpsburg*. This Court stated in *Hull*:

> [T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. * * * [T]he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. *Hence*, States, *religious organizations*, and individuals *must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.* [*Id.* at 449 (emphasis added).]

This Court's *Serbian* decision does not affect the Court's prior holdings in *Hull* and *Sharpsburg*, since the question of the applicability of neutral principles of law was not an issue in *Serbian*.[4]

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[4] See footnote 15 at 170. "No claim is made that the 'formal title' doctrine by which church property disputes may be decided in civil courts is to be applied in this case."

The constitutional rule as summarized in the *Serbian* decision [5] simply directs that the decisions of ecclesiastical tribunals *to which have been granted the jurisdiction and power to determine ecclesiastical disputes* within the denomination must be accepted but the mere existence of these tribunals without a determination that they have been clothed with the proper authority is not sufficient to make their decision binding upon the civil courts.

If the rule of law applicable to hierarchical church property disputes is to be determined as indicated by the court below as "who represents MPC?" (Appendix A, p. A-12), or as stated by the petitioners in *Jones* v. *Wolf*, 243 S.E.2d 860, *cert. granted*, U.S. No. 78-91, "who is the true congregation?" local churches connectionally associated with hierarchical denominations will be forever barred from redress of wrongs in the civil courts. It is impossible to conceive of a hierarchical tribunal determining that those who disagree with the hierarchy are right! Obviously the hierarchy would decide that those loyal to the hierarchy "represented the local church" or were the "true congregation." No issue would ever remain for decision by civil courts in church property disputes. A judicial requirement of deference to a decision of this kind would clearly result in the establishment of hierarchical denominations contrary to the First Amendment.

The principle of deference to hierarchical tribunals recognizes that such deference is only due to those church courts which properly may consider the question for

[5] In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. At 724-725.

which deference is sought. Nothing in the record below confirms jurisdiction for the determination of this property dispute in any tribunal of the PCUS other than the regularly elected Session and trustees of the local church. Any consideration of the acts of the Respondents must be viewed in light of the power and authority granted to them by the hierarchy.

The primary difficulty with the "deference" rule is that it is results oriented. Petitioners are not aware of any decision following that rule which has not favored the position of the hierarchy as in the decision below. What could indicate more clearly an unconstitutional rule of law establishing hierarchical religious organizations? The adoption by this Court of the "neutral principles of law" rule would not have such an effect and would require that property ownership by all religious organizations be treated in exactly the same manner as property ownership generally. Nothing in the recognition of the neutral principles of law rule would give rise to the concern of an impermissible examination of ecclesiastical doctrine or structure to make the congregational verses denominational decision. No longer would there be the question of an unconstitutional consideration of religious polity. There is no need to treat hierarchical denominations differently and nothing prevents hierarchical denominations from complying with or structuring their relationships in accordance with neutral principles of law. If it is, in fact, the desire of the hierarchy to control property ownership, let them say so before the dispute arises! If they have the power they claim to have, let them require the local congregation to impose an *express* trust relationship on the property so that everyone will know and neutral principles of law can be applied openly to protect the interest of the hierarchy. Nothing would prevent a hierarchy from claiming the existence of a constructive or resulting trust in local church property if the facts are there to support it. The neutral prin-

ciples of law rule does not favor or establish any particular form of religious organization but requires equal protection and fair treatment under the law for all.

The present status of the law is such that the question involved herein will continue to arise. The clearest illustration of the difficulty faced by churches throughout the nation is the decision of the Supreme Court of Georgia on April 4, 1978, in *Jones* v. *Wolf*, 243 S.E.2d 860 (1978), and the decision of the court below on July 20, 1978, in *Mills* v. *Baldwin*, 362 So.2d 2 (1978), based upon the same decisions of this Court.

CONCLUSION

We respectfully urge the Court, for all of the reasons set forth above, to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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Attorneys for Petitioners

Appendices

APPENDIX A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1978

Case No. 51,588

DCA Case No. Z-13

CRAIG MILLS and H. SAVELY MCQUAGGE, Trustees of the Presbytery of Florida; FRANK L. ELVERY, RICHARD L. SCOGGINS, C. FRANKLIN BEALL, LOUISE EYSTER, REEVES BOWEN and FRED MCGEHEE, as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; HENRY RAGANS and OSCAR BECK, JR., as and constituting the Session of the Madison Presbyterian Church in Madison, Florida,

Petitioners,

v.

JOHN P. BALDWIN, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; BRUCE M. BRYAN, JULIAN DURANT, JULIAN GIBSON, THEODORE GIBSON, A. L. HUGHES, and KIRBY RIECHMANN, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida,

Respondents.

Opinion filed July 20, 1978

Writ of Certiorari to the District Court of Appeal, First District

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Edward D. Foreman; and James W. Martin of Brickley and Martin, St. Petersburg, Florida, for William P. Thompson, States Clerk of the General Assembly of The United Presbyterian Church in The United States of America, and for Robert L. Thompson, Executive Presbyter of The Presbytery of West Florida, Synod of The South, of The United Presbyterian Church in The United States of America, Amicus Curiae

SUNDBERG, J.

This cause is a petition for writ of certiorari to review a decision of the District Court of Appeal, First District, reported at 344 So.2d 259, which is alleged to be in conflict with *St. John's Presbytery* v. *Central Presbyterian Church*, 102 So.2d 714 (Fla. 1958) and *Froelich* v. *Rowley*, 102 So.2d 720 (Fla. 1958). On petition for rehearing of our prior denial of writ of certiorari in this cause, we have concluded that this Court is possessed of jurisdiction under Article V, Section 3(b)(3), of the Florida Constitution.

Essentially this case involves a dispute over the ownership of property of the Madison Presbyterian Church in Madison, Florida, or stated more accurately, a controversy as to who constitutes the Madison Presbyterian Church in Madison, Florida. The dispute is occasioned by the withdrawal of a majority of the congregation from the Presbyterian Church in the United States (PCUS) and its claim of title to the church property as against the claim of the minority of the congregation who did not withdraw but remained faithful to the parent church.

Applying "neutral principles of law" the majority of the district court concluded that there was no implied trust in favor of the mother church as was found to exist in *Central Presbyterian Church*, supra, and, accordingly, held the property of the church to be vested in the withdrawing members. The factual background of the controversy is stated in the district court opinion thus:

> Plaintiffs in the trial court, [petitioners], were Craig Mills and H. Savely McQuagge, Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; Frank L. Elvery, Richard L. Scoggins, C. Franklin Beall, Louise Eyster, Reeves Bowen and Fred McGehee as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; Henry Ragans and Oscar Beck, Jr. as members of and recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida. The defendants, [respondents], were (as named and designated by the plaintiffs) John P. Baldwin, individually, and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; Bruce M. Bryan, Julian DuRant, Julian Gibson, Theodore Gibson, A. L. Hughes and Kirby Reichmann, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida, and Florida First National Bank at Madison, a bank holding funds on deposit in the name of the church. The attorneys for the respective parties entered into a lengthy stipulation which was filed in evidence before the trial judge agreeing upon numerous facts many of which, although not relevant to the application of sterile legal doctrines, are necessary in order to understand the factual basis of the controversy.

A Church Session is the governing body of a local church. A Presbytery is composed of several churches in a geographical area; a Synod is generally composed of all Presbyteries within a State or other designated geographical area and the General Assembly is the highest governing body in the hierarchical spiritual structure of the Presbyterian Church.

The first Presbyterian Church was established in America on the Virginia coast in 1607. Originally there was one main body of Presbyterianism which was known as the Presbyterian Church in the United States of America. (PCUSA) The Madison Presbyterian Church located at Madison, Florida was founded in 1840. It was originally a part of the Presbytery of Georgia but later became a congregation of the Presbytery of Florida. It is, and at all times has been, an unincorporated entity. Since its formation in 1840 all of the church property has been held by trustees elected by a majority of the congregation of the church. The primary church property was acquired by deed executed in March of 1851 to the "Trustees of the Presbyterian Church at Madison aforesaid and their successors in office * * * To Have and To Hold the said lots of land to and for the use of the Presbyterian Church at Madison." In 1861 the Presbytery of Florida met at the Madison Presbyterian Church in Madison and unanimously adopted a resolution severing its affiliation with the Presbyterian Church in the United States of America (PCUSA) and concurred in a call for Commissioners for the organization of a General Assembly with power to organize a new church. The Madison Church sent a delegate to the meeting of the General Assembly held in 1861 (held incidentally at the Madison Church) at which time a resolution was unanimously adopted by which a denomination

was formed bearing the name Presbyterian Church in the Confederate States of America. Thereafter, the name of that denomination was changed to the Presbyterian Church of the United States (PCUS). The parties have stipulated that neither the General Assembly of the Presbyterian Church in the United States nor the Synod of Florida nor the Presbytery of Florida has ever contributed any property to the Madison Presbyterian Church, nor has it provided any funds with which the property of said church was acquired.

On March 11, 1973, John P. Baldwin, then the regular ordained and installed Pastor of the Madison Presbyterian Church, presided over a meeting of the congregation. Upon a vote taken at such meeting, a petition was adopted requesting the Presbytery of Florida to dismiss the Madison church and its property from the Presbytery and to dismiss and dissolve the relationship between Rev. Baldwin and the Presbytery of Florida and the PCUS. Following various intrachurch maneuvers a resolution was adopted by the congregation of the Madison Presbyterian Church on May 20, 1973 withdrawing from and severing all relationship with the Presbytery of Florida and the PCUS. On June 5, 1973 the Presbytery of Florida removed the name of John Baldwin from the roll of the Presbytery and declared the pulpit of the Madison Presbyterian Church to be vacant. The Presbytery declared and recognized Messrs. Beck and Ragans, among others, as constituting the Church Session of the Madison Presbyterian Church with full authority to assume control of the congregation and all land, buildings, personal property and monies of the local church.

On August 7, 1973 plaintiffs [petitioners] filed an action in Circuit Court asking that the individual defendants [respondents] and all others associated

> with them be restrained from interfering with the plaintiffs and other "loyal" members of the PCUS in the use of the property of the Madison Presbyterian Church; from using or attempting to use the property of the Madison Presbyterian Church for any purpose except in conformity with and subject to the government and discipline of the PCUS; from selling, disposing of or encumbering the property of the Madison Presbyterian Church; from paying or delivering to any person or corporation any money, funds, bonds, securities, or other property in their possession or under their control constituting the property of the Madison Presbyterian Church and from occupying the Manse of the Madison Presbyterian Church. The foundation of the plaintiffs' cause of action as alleged in their complaint was a "trust originally imposed upon said property [of the Madison Presbyterian Church] for the promulgation of the trusts and doctrines of the Presbyterian Church in the United States * *." At the conclusion of a lengthy trial, final judgment was entered for the plaintiffs.

344 So.2d at 260-62 (footnotes omitted).

The majority below determined that the structure of the Presbyterian Church, being hierarchical as opposed to congregational, was immaterial to its resolution of the case because, through application of "neutral principles of law" to the facts, neither form of accepted implied trust (constructive or resulting) could be recognized. This conclusion of the district court was based primarily upon its finding that no funds were provided by either the Presbytery of Florida or PCUS with which any of the property of the Madison Church was acquired. Consequently, the necessary ingredient for a constructive trust was absent. Likewise, there was no evidence at trial that any of the properties conveyed to

the Madison Church "were intended to be conveyed for the benefit of any entity other than the congregation of the Madison Presbyterian Church" and, therefore, no resulting trust could arise. Its position with respect to the absence of a resulting trust was bolstered by the fact that PCUS did not come into existence until some 21 years after the Madison Church was organized. *St. John's Presbytery* v. *Central Presbyterian Church* and *Froelich* v. *Rowley*, supra, were distinguished by the district court on the premise that the facts in those cases demonstrated the existence of elements necessary to support a constructive trust.

Most respectfully we must disagree with the analysis of the majority of the district court. This Court subscribes to the reasoning and conclusion of Judge Smith's dissent below, and it would be of little benefit to restate what was so ably put by him. However, since it bears upon the jurisdiction of this Court as well as the merits of the controversy, we deem it appropriate to elucidate why we believe *Central Presbyterian Church* and *Froelich* are controlling here.

The salient facts as found by the chancellor in *Central Presbyterian Church* were:

> (1) During the year 1953, defendant, Central Church, withdrew from the Presbyterian Church in the United States (Southern), hereinafter referred to as Presbyterian Church. It is shown that Central Church was organized or established by the First Presbyterian Church of St. Petersburg and received financial assistance from it; that the original deed of conveyance was made to the "Trustees of the West Central Presbyterian Church and their successors." The church was later incorporated under the laws of Florida and title to the realty was conveyed to "Central Presbyterian Church of St. Petersburg, Florida, a corporation."

> (2) The chancellor further found that none of these deeds created a trust but were absolute conveyances to the grantees named, the first grantee being Central Church, a corporation; that the will of H. H. and Harriet Victory, deceased, directs their trustees to pay over the balance remaining after certain bequests are paid to certain beneficiaries including "Central Presbyterian Church of St. Petersburg."

102 So.2d at 715.

Based upon his comparison of Chapter 27, paragraphs 9 and 10, Constitution of the Presbyterian Church of the United States of America (PCUSA) with paragraph 163, Book of Church Order of the Presbyterian Church of the United States (PCUS), the chancellor concluded that while the government of PCUSA was hierarchical in nature, that of PCUS was congregational. In reversing the chancellor, this Court stated:

> The admissions in the answer and the evidence without contradiction show that the Presbyterian churches in the United States are not congregational in government but are representative, they are governed by an ascending series of judicatories known as the session, the presbytery, the synod and the general assembly, which is governed by a constitution and an ecclesiastical code giving it legislative, executive and judicial powers. Questions of usage, custom or practice relating to the local church or its members are governed by these judicatories and each is bound to the other by church or ecclesiastical law.[1]

102 So.2d at 716.

[1] It should be noted that the trial judge in the instant case made the identical finding that PCUS is hierarchical and not congregational in structure.

After reviewing the substance of the documents creating title in the "Central Presbyterian Church of St. Petersburg" (a non-profit corporation), including the original conveyance to the "Trustees of West Central Presbyterian Church and their successors in office," the Court applied the doctrine of *Watson* v. *Jones*, 13 Wall. 679, 20 L.Ed. 666 (1872), and held that the property in question should not be diverted from the parent church by the withdrawing members. Consequently, the faithful minority were awarded the use of the property as the rightful representatives of the original church as it existed before the schism.

The district court opinion herein places great emphasis upon the fact that the affected church in *Central Presbyterian Church* had been organized and established by an existing Presbyterian church in St. Petersburg from which it received financial assistance and a gift of the disputed property. This, together with the language of the original conveyance of the disputed property, was persuasive to the court as distinguishing the case at bar from *Central Presbyterian Church*. The district court was bolstered in its conclusion by the reference of Justice Terrell in *Central Presbyterian Church* to *Reid* v. *Barry*, 93 Fla. 849, 112 So. 846 (1927). However, we can draw no such inference from Justice Terrell's discussion of *Reid* v. *Barry*. He simply distinguished the latter case from *Central Presbyterian Church* on the premise that on the face of the deed in *Reid* there was no reference to a trust for the benefit of the Roman Catholic Church, whereas in *Central Presbyterian Church* the root deed ran to "Trustees of West Central Presbyterian Church of St. Petersburg and their successors in office." As stated by Justice Terrell:

> In Reid v. Barry the complaint nowhere alleges "that the deed was a trust deed, or that it was made to the bishop for the benefit of the Roman

> Catholic Church." It is silent as to the purpose for which it was made and the Roman Catholic Church is nowhere named therein, while here it is alleged and admitted that the property was acquired by the First Presbyterian Church of St. Petersburg and was given and conveyed to "Trustees of West Central Presbyterian Church of St. Petersburg and their successors. . . .

102 So.2d at 719.

The conveyances here under consideration run to the "Trustees of the Presbyterian Church at Madison" and the "Trustees of the Madison Presbyterian Church of Madison." In the *Reid* case the conveyance was absolute on its face with no intimation of beneficial enjoyment in others except the reference to the grantee's office. As the Court pointed out in *Reid*:

> It can hardly be argued that the language of this deed necessarily implies the intention to create a trust, for any particular purpose, or for the benefit of any particular beneficiary, none being named, and there being no precatory words contained therein.

112 So. at 857.

Justice Terrell simply sought to distinguish *Reid* on the obvious basis that the deed therein contained no language to imply a trust, whereas the deed in *Central Presbyterian Church* connoted a trust relationship and the object thereof.

The basis for the decision in *Central Presbyterian Church* is indicated by two excerpts from the opinion. After citing numerous authorities in accord with *Watson* v. *Jones*, supra, the *Central Presbyterian Church* Court said:

> This is an abounding array of authorities but they all treat some phase of litigation growing out of church schisms in which both factions lay claim to

> the church property. When the church is representative, republican or episcopal in government, the authorities uniformly hold that the church property whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. It matters not whether those who withdraw from the mother church constitute a majority or a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran, I have found no exception to this rule. *They could not function under any other rule.*

102 So.2d at 718 (emphasis supplied).

That the real basis for the decision in *Central Presbyterian Church* was the principle of church structure, and not neutral principles of trust law, is borne out by the judgment therein:

> It follows that the final decree of the chancellor must be, and is, hereby reversed with directions to enter a decree holding that, on account of the circumstances shown an implied trust existed in the property in question in favor of the Central Presbyterian Church of St. Petersburg for the use of the Presbyterian Church in the United States *and awarding the use of said property to appellants as the rightful representatives of the original church as it existed before the schism.*

102 So.2d at 719-20 (emphasis supplied).

Furthermore, *Froelich* v. *Rowley*, supra, decided the same day as *Central Presbyterian Church*, is even more instructive on this point. In *Froelich*, another church schism case, where neither the source of the property nor whether it was acquired before or after the congregation's affiliation with the parent church is indicated, Justice Terrell described the substantive issue and its resolution:

> The first question presented is whether or not the majority of the congregation of a Presbyterian Church in the United States can withdraw from said church and the presbytery and claim title to the church property as against the claim of title of the minority group who did not withdraw but remained faithful to the parent church.
>
> This is the identical question that was presented and decided in St. John's Presbytery v. Central Presbyterian Church of St. Petersburg. What we said in that case concludes the point raised here contrary to the contention of appellants [the withdrawing majority].

102 So.2d at 721.

In short, a careful reading of the cases makes clear that the issue in a case such as this is not who owns the property. The Madison Presbyterian Church of Madison, Florida, owns the property. The true issue is—who represents the Madison Presbyterian Church? The authorities from *Watson* v. *Jones* forward clearly respond that petitioners represent that church because of the structure and government of PCUS. As pointed out in Judge Smith's dissent, the fact that PCUS was formed by the secession of Presbyterian churches in the Confederacy a generation after organization of the Madison church affects not at all the commitment of the Madison Presbyterian Church to PCUS in 1861 and continuously for generations thereafter.

Accordingly, the petition for certiorari is granted, the opinion of the District Court of Appeal, First District, is quashed and the dissenting opinion is adopted as the opinion of this Court.

It is so ordered.

ENGLAND, C.J., ADKINS, OVERTON and ALDERMAN, JJ., Concur

BOYD, J., Dissents with an opinion, with which HATCHETT, J., Concurs

BOYD, J., dissenting.

I would discharge the writ of certiorari because I do not believe there is conflict. As the majority acknowledges, the court below decided the church property dispute based on trust law, while the alleged conflicting decisions, just as the majority's, find the disputes over church property to turn on which group constitutes the church. The questions, one legal, the other, at least partially ecclesiastical, are wholly dissimilar. Nor do I see a misapplication of *St. John's Presbytery* v. *Central Presbyterian Church*, 102 So. 2d 714 (Fla. 1958) and *Froelich* v. *Rowley*, 102 So. 2d 720 (Fla. 1958), since principles of trust law were applied in those two cases to factual situations that are, as detailed in the opinion now quashed, dissimilar to the factual situation in this case.

Moreover, I am distressed, *Central Presbyterian Church* and *Froelich* notwithstanding, that the Court is so willing to step into a dispute over church property that it believes should be resolved under a "principle of church structure" rather than "neutral principles of . . . law," opinion of the Court, before, at 8, when the decision of the court below can stand on the legal principles alone. While a civil[1] court may open its doors to a dispute over church property, the court has no role in settling the matter through a determination on the basis of whether one group departed from church doctrine. *Presbyterian Church* v. *Hill Church*, 393 U.S. 401 (1969). To assume such a role involves the civil courts in an ecclesiastical question solely within the purview of the church contrary to the Freedom of Religion clauses in the First Amendment to the U.S. Constitution.[2] The Court today treads dangerously close

[1] To be distinguished from ecclesiastical and military courts rather than criminal courts.

[2] Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . .

to the boundary of territory of religious freedom protected constitutionally from civil court interference. It may be that a determination of church structure is properly within a civil court when church property is at stake, especially in a case in which another forum, such as an ecclesiastical court, will be partial or is unavailable. But the Court in this case need not take the risk of impinging on religious freedom since the case is clearly litigable under trust law.

HATCHETT, J., Concurs

IN THE SUPREME COURT OF FLORIDA
THURSDAY, SEPTEMBER 28, 1978

Case No. 51,588

District Court of Appeal, First District Z-13

CRAIG MILLS, et al.,
Petitioners,

v.

JOHN P. BALDWIN, etc., et al.,
Respondents.

On consideration of the petition for rehearing filed by attorney for respondents,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

ENGLAND, C.J., ADKINS, OVERTON, SUNBERG and ALDERMAN, JJ., concur

BOYD and HATCHETT, JJ., dissent

TC

cc: Hon. Raymond E. Rhodes, Clerk
Hon. Royce Agner, Judge
Hon. Dale M. Leslie, Clerk

C. Graham Carothers, Esquire
John K. Folsom, Esquire
Edwin B. Browning, Esquire
Edward D. Foreman, Esquire
James W. Martin, Esquire
Raymer F. Maguire, Jr., Esquire

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

By: /s/ Tanya Carroll
Deputy Clerk

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A.D. 1977

Case No. Z-13

JOHN P. BALDWIN, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; BRUCE M. BRYAN; JULIAN DURANT; JULIAN GIBSON; THEODORE GIBSON; A. L. HUGHES; and KIRBY REICHMANN, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida,
Appellants,

v.

CRAIG MILLS and H. SAVELY MCQUAGGE, Trustees of the Presbytery of Florida; FRANK L. ELVERY, RICHARD L. SCOGGINS, C. FRANKLIN BEALL, LOUISE EYSTER, REEVES BOWEN and FRED MCGEHEE, as and constituting the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; HENRY RAGANS and OSCAR BECK, JR., as and constituting the Session of the Madison Presbyterian Church in Madison, Florida,
Appellees.

Opinion filed March 25, 1977.

An Appeal from the Circuit Court of Madison County. Royce Agner, Judge.

F. E. Steinmeyer, III of Folsom and Steinmeyer for appellants.

C. Graham Carothers; Edwin B. Browning for appellees.

BOYER, Chief Judge.

This appeal emanates from an intra-church dispute between two factions vying for control of church property. Involved are spiritual, emotional, legal and constitutional issues. In recognition of the wall of separation erected by Thomas Jefferson between church and state as part of the First Amendment to the Constitution of the United States[1] we must, in response to the constitutional mandate, meticulously tread around the emotional and religious issues and base our conclusions on sterile legal doctrines.[2]

Plaintiffs in the trial court, appellees here, were Craig Mills and H. Savely McQuagge, Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; Frank L. Elvery, Richard L. Scoggins, C. Franklin Beall, Louise Eyster, Reeves Bowen and Fred McGehee as and constituting the Administrative Commission of the Presbystery of Florida of the Presbyterian Church in the United States; Henry Ragans and Oscar Beck, Jr. as members of and recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida. The defendants, appellants here, were (as named and designated by the plaintiffs) John P. Baldwin, individually, and claiming to be Moderator of the Session of the Madi-

[1] Robert M. Healy, *Jefferson on Religion in Public Education*, 130 *et seq.* (1962)

[2] See Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, U.S.S.C. 1969, 393 U.S. 440.

son Presbyterian Church in Madison, Florida; Bruce M. Bryan, Julian DuRant, Julian Gibson, Theodore Gibson, A. L. Hughes and Kirby Reichmann, individually and claiming to be members of the Church Session of the Madison Presbyterian Church in Madison, Florida, and Florida First National Bank at Madison, a bank holding funds on deposit in the name of the church. The attorneys for the respective parties entered into a lengthy stipulation which was filed in evidence before the trial judge agreeing upon numerous facts many of which, although not relevant to the application of sterile legal doctrines, are necessary in order to understand the factual basis of the controversy.

A Church Session is the governing body of a local church. A Presbytery is composed of several churches in a geographical area; a Synod is generally composed of all Presbyteries within a state or other designated geographical area and the General Assembly is the highest governing body in the hierarchical spiritual structure of the Presbyterian Church.

The first Presbyterian Church was established in America on the Virginia coast in 1607. Originally there was one main body of Presbyterianism which was known as the Presbyterian Church in the United States of America. (PCUSA) The Madison Presbyterian Church located at Madison, Florida was founded in 1840.[3] It was originally a part of the Presbytery of Georgia but later became a congregation of the Presbytery of Florida. It is, and at all times has been, an unincorporated entity. Since its formation in 1840 all of the church property has been held by the trustees elected by a majority of the

[3] The term "Presbyterian Church", as the evidence in this case demonstrates, has meant different things at different times and is not readily susceptible to specific definition. There are now approximately eight Presbyterian denominations in the United States with varying constitutions and governmental structures.

congregation of the church. The primary church property was acquired by deed executed in March of 1851 to the "Trustees of the Presbyterian Church at Madison aforesaid and their successors in office * * * To Have and To Hold the said lots of land to and for the use of the Presbyterian Church at Madison". In 1861 the Presbytery of Florida met at the Madison Presbyterian Church in Madison and unanimously adopted a resolution severing its affiliation with the Presbyterian Church in the United States of America (PCUSA) and concurred in a call for Commissioners for the organization of a General Assembly with power to organize a new church. The Madison Church sent a delegate to the meeting of the General Assembly held in 1861 (held incidentally at the Madison Church) at which time a resolution was unanimously adopted by which a denomination was formed bearing the name Presbyterian Church in the Confederate States of America. Thereafter, the name of that denomination was changed to the Presbyterian Church of the United States (PCUS). The parties have stipulated that neither the General Assembly of the Presbyterian Church, in the United States nor the Synod of Florida nor the Presbytery of Florida has ever contributed any property to the Madison Presbyterian Church, nor has it provided any funds with which the property of said church was acquired.[4]

On March 11, 1973, John P. Baldwin, then the regular ordained and installed Pastor of the Madison Presbyterian Church, presided over a meeting of the congregation. Upon a vote taken at such meeting, a petition was adopted requesting the Presbytery of Florida to dismiss the Madison church and its property from the Presbytery and to dismiss and dissolve the relationship between Rev. Baldwin and the Presbytery of Florida and the PCUS.

[4] The Presbytery did in the 1870's make minimal payments toward the Pastor's salary for time he devoted to ministering to another church.

Following various intra-church maneuvers a resolution was adopted by the congregation of the Madison Presbyterian Church on May 20, 1973[5] withdrawing from and severing all relationship with the Presbytery of Florida and the PCUS. On June 5, 1973 the Presbytery of Florida removed the name of John Baldwin from the roll of the Presbytery and declared the pulpit of the Madison Presbyterian Church to be vacant. The Presbytery declared and recognized Messrs. Beck and Ragans, among others, as constituting the Church Session of the Madison Presbyterian Church with full authority to assume control of the congregation and all land, buildings, personal property and monies of the local church.[6]

On August 7, 1973 plaintiffs (appellees here) filed an action in Circuit Court asking that the individual defendants and all others associated with them be restrained from interfering with the plaintiffs and other "loyal" members of the PCUS in the use of the property of the Madison Presbyterian Church; from using or attempting to use the property of the Madison Presbyterian Church for any purpose except in conformity with and subject to the government and discipline of the PCUS; from selling, disposing of or encumbering the property of the Madison Presbyterian Church; from paying or delivering to any person or corporation any money, funds, bonds, securities, or other property in their possession or under their control

[5] 74 in favor and 29 opposed.

[6] The parties have stipulated that appellants Bruce M. Bryan, Julian DuRant, Julian Gibson, Theodore Gibson, A. L. Hughes, and Kirby Reichmann constituted a majority of the Session of the Madison Presbyterian Church, elected by a majority of the congregation of said church, at the time of the actions complained of by plaintiffs (appellees) in this case. They also stipulated that at the time of the actions complained of by the plaintiffs the defendants (appellants here) Bruce M. Bryan, Julian DuRant, Julian Gibson, A. L. Hughes and Kirby Reichmann constituted a majority of the Trustees of the Madison Presbyterian Church, elected by a majority of the congregation of said church.

constituting the property of the Madison Presbyterian Church and from occupying the Manse of the Madison Presbyterian Church. The foundation of the plaintiffs' cause of action as alleged in their complaint was a "trust originally imposed upon said property [of the Madison Presbyterian Church] for the promulgation of the trusts and doctrines of the Presbyterian Church in the United States * * *". At the conclusion of a lengthy trial, final judgment was entered for the plaintiffs. This appeal followed.

Appellants first argue that appellees did not have standing in the trial court to maintain the action and that the proper representative of the PCUS is the General Assembly. According to appellants, the trial court erred in concluding that the Presbytery of Florida did have standing and further erred in citing as authority for his conclusions certain provisions of the PCUS constitution as found in the Book of Church Order.

In determining whether a party adequately represents a class, the test is whether the interests of the persons who are not parties to the suit can be better protected if they act for themselves.[7] In each case where the alleged representatives of a class are challenged, the question is whether the purported representatives "are sufficient under the circumstances of the case to truly represent the class as to whom the suit is directed."[8] Applying those principles, we find that appellees were and are proper parties to sue on behalf of the proposed class. The individual plaintiffs comprised three separate groups: The Trustees of the Presbytery of Florida, the Administrative Commission of the Presbytery of Florida of the PCUS, and those members of the Madison church remaining "loyal" to the PCUS and purporting to constitute the

[7] Ross v. Gerung, 69 So.2d 650 (Fla. 1954).

[8] Ibid.

Session of the Madison church. We find nothing in the record to refute the trial court's finding that those groups truly and fairly represent the national organization. It is no argument to claim that another group could serve as the representative of the class. While the General Assembly of the PCUS may represent the national organization in most matters, there has been no showing that the General Assembly is to be the exclusive representative of the PCUS in class actions nor that the appellees would not adequately represent the PCUS in the present class action. In the absence of either showing, we will refrain from disturbing the trial court's conclusions as to the issue of standing.

The more fundamental issue is whether the trial court erred in imposing an implied trust in favor of the PCUS upon the property of the Madison church.[9] That question raises the spectre of the First Amendment of the Constitution of the United States. The "Implied Trust Doctrine" as applied in church disputes has its origin in a vintage U.S. Supreme Court case, Watson v. Jones, 80 U.S. 679 (1871).[10] To summarize the holding of that case as it may be relevant to the case sub judice, a local church belonging to a general church organization which is hierarchical in nature may not withdraw from the

[9] In the adjudicatory portion of the final judgment here appealed the trial judge stated "IT IS THEREFORE, ORDERED AND ADJUDGED that the title and possession of the real property hereinabove described is in the Madison Presbyterian Church in Madison, Florida, subject to an implied trust for the use and benefit of the Presbyterian Church in the United States."

[10] The parties stipulated that the Walnut Street Presbyterian Church in Louisville, Kentucky over which the litigation occurred in Watson v. Jones was a Presbyterian church which was a congregation of the Presbyterian Church in the United States of America (PCUSA) and that said Walnut Street Presbyterian Church was not, at the time said case was litigated, subject to the government and discipline of the Presbyterian Church of the United States (PCUS).

general church organization and still retain local church property or the use of it: Withdrawal from the national organization causes the local church property to devolve to the national organization by virtue of the Implied Trust Doctrine. Although the Watson case was decided according to federal commonlaw principles, and was rendered before Erie R. Co. v. Tompkins,[11] and before the requirements of the First Amendment were held applicable to the states through the Fourteenth Amendment, the unrelying philosophy of the decision was constitutional in nature and was recognized as such in Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.

The latter case, appellants urge, sounded the death knell to the Implied Trust Doctrine. A closer reading of the case leads to a contrary conclusion. In the Mary Elizabeth Blue Hull case, the court considered a similar factual situation involving the same denomination as the case sub judice and specifically invalidated an aspect of Georgia law which submitted the case to the jury on the theory that a trust would be implied on local church property for the benefit of the general church on the condition that the general church adhere to its tenants of faith and practice existing at the time of affiliation by the local church. In other words, the question for the jury was whether the actions of the general church amounted to a fundamental or substantial abandonment of the original tenets and doctrines of the general church. The United States Supreme Court found that such a question was constitutionally impermissible because the so-called "departure-from-doctrine" element of the Georgia implied trust theory required, "* * * the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance

[11] 304 U.S. 64 (1938).

of those doctrines to religion." [12] The court noted that civil courts should not resolve controversies over religious doctrine and practice, but recognized that there were neutral principles of law which could be applied without "establishing" churches.[13] Thus, the Court invalidated the "departure-from-doctrine" element of Georgia's implied trust theory; [14] but not the entire implied trust theory itself.[15]

The teachings of Mary Elizabeth Blue Hull are that the state has a legitimate interest in resolving property disputes and that a civil court is a proper forum for such resolution notwithstanding that the dispute involves a church. We are also admonished that civil courts have *no* role in determining ecclesiastical questions: However, not every civil court decision as to property claimed by a religious organization jeopardizes neutral principles of law, developed for use in all property disputes, which can be constitutionally applied in church property disputes.

It necessarily follows therefore that application of neutral principles of law requires judicial interpretation

[12] 393 U.S. at 450.

[13] 393 U.S. at 449.

[14] On remand, the Georgia Supreme Court, finding that the departure-from-doctrine was an essential element of Georgia's implied trust doctrine, held that since the departure-from-doctrine was invalid, the entire implied trust doctrine must fail. Using neutral principles of law, specifically, an examination of the formal documents of title, the court concluded that title to the church property was vested in the local church. Presbyterian Church in United States v. Eastern Heights Presbyterian Church, 167 SE 2d 658 (Ga. 1969), cert. den., 396 U.S. 1041 (1970).

[15] It has also been stated by Justice Brennan, in a concurring opinion joined by two other Justices, that the implied trust doctrine was one of the three permissible approaches for settling church property disputes, so long as there was no consideration of doctrinal matters, whether ritual and liturgy of worship or tenets of faith. Maryland and V. Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 368 (1970).

of instruments granting property to religious organizations to be conducted under the same principles as those applied to instruments granting property to any individual or organization. Application of neutral principles of law will not prevent the creation of an express or implied trust in favor of a religious organization where the conveying instrument contains the appropriate language or where the religious organization has supplied congregational property or the funds for its acquisition.

Applying the foregoing teachings to the unique facts of the case sub judice we are unable to agree with the conclusion of the learned trial judge that "record title to the property in dispute is held by the Trustees of Madison Church of Madison, Florida for those persons recognized as members of that particular church by the respective courts of the Presbyterian Church U.S. subject to an implied trust in said property for the uses and purposes of those belonging to and professing to be members of the Presbyterian Church U.S." The documents of title, which are the primary source of information in all property disputes, reveal that title to the church property is vested in the Trustees of the Presbyterian Church at Madison or the Trustees of the Madison Presbyterian Church of Madison. The one deed which gives any indication of intended use prescribes that the property is "for the use of the Presbyterian Church at Madison." The root deed predates the existence of the PCUS. In the absence, then, of some subsequent document or understanding between the Madison church, which predated the PCUS, and the latter organization it is apparent that no trust could have come into being. The evidence reveals no such subsequent understanding nor basis for a trust of any kind, implied or express.

No express trust can be said to have arisen under neutral principles of law because, as already noted, none of the conveying instruments contain any reference whatsoever to the Presbytery of Florida nor to the PCUS, and the evidence reveals no subsequent document nor understanding of that effect.

If an implied trust is to be imposed under neutral principles of law it must be either a "constructive trust" or a "resulting trust". A constructive trust arises to avoid unjust enrichment as a result of fraud, duress or mistake; as where, for instance, a party not named in the conveying instrument has provided all or part of the funds by which the property was acquired. By stipulation of the parties neither the Presbytery of Florida nor the PCUS provided any funds with which any of the property of the Madison church was acquired. A resulting trust arises to accomplish the presumed intent of the parties, as where the parties intend that the holder of the title is to hold in behalf of the other. The plaintiffs produced no evidence at trial that any of the properties conveyed to the Madison church were intended to be conveyed for the benefit of any entity other than the congregation of the Madison Presbyterian Church. In that regard it is desirable to again repeat that the property of the Madison church which is of principal value and importance was conveyed to the Madison church several years before the PCUS even came into existence. Indeed, if it might be said that an implied trust exists at all it would be in favor of the Presbyterian Church in the United States of America (PCUSA), the "parent" organization which yet exists and with which the Madison church was affiliated prior to withdrawal in 1861.[16] It is difficult to understand how the Madison church might be held to have successfully withdrawn itself and its property from the PCUSA in 1861

[16] It is interesting to note that PCUS itself is an organization which was founded upon the principle of unilateral withdrawal from a denomination, having been founded by dissenters, the Presbytery of Florida among them, which, as previously mentioned, unilaterally withdrew in 1861.

but be unable in 1973 to withdraw itself and its property from the PCUS which could not be the "mother" church since it came into existence after the Madison church was already 21 years of age. It is axiomatic that a mother must be older than her child.

Prior to Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra, and its progeny, Presbyterian Church in United States v. Eastern Heights Presbyterian Church, supra, it might have been argued that Watson v. Jones had created a third category of implied trusts, in addition to the traditional resulting trusts and constructive trusts. However, a careful reading of Watson v. Jones reflects that it was not necessary under the facts there recited to create a third category, as the facts of that case fit the traditional application of implied trust. If indeed Watson v. Jones may be said to have created a third category of implied trust, it is clear in the light of Mary Elizabeth Blue Hull that it has lost some of its vitality since Erie R. Co. v. Tompkins and that now neutral principles of trust law applicable to all such controversies in the particular jurisdiction will be applied in church property disputes. Lest it be urged that St. Johns Presbytery v. Central Presbyterian Church,[17] recognized a third category of implied trusts in Florida we refer back to that opinion and find that there is nothing there to so indicate. The facts in St. Johns Presbytery fit traditional trust principles. Indeed, a careful reading of that opinion reveals that the author, in distinguishing Reid v. Barry,[18] struggled mightily to demonstrate that there was no intention of engrafting any new doctrine onto the traditional principles of trusts in Florida. It necessarily therefore follows, applying neutral principles

[17] St. Johns Presbytery v. Central Presbyterian Church, 102 So.2d 714 (Fla. 1958).

[18] Reid v. Barry, 93 Fla. 849, 112 So. 846 (Fla. 1927).

of trust law, that in order to impress an implied trust the facts must establish either a constructive trust or a resulting trust. The facts sub judice support neither. Appellees do not even contend that there exists an express trust. It follows then that there is no trust at all.

The stipulation of the parties recites that "since the formation of the Madison Presbyterian Church in 1840 *all of the property of the said church has been held by trustees elected by a majority of the congregation of the Church*", that "*defendants* Bruce M. Bryan, Julian DuRant, Julian Gibson, Theodore Gibson, A. L. Hughes and Kirby Reichmann *constituted a majority of the Session* of the Madison Presbyterian Church, *elected by a majority of the congregation* of said church, at the time of the actions complained of by the plaintiffs in this cause" and that "*defendants*, Bruce M. Bryan, Julian DuRant, Julian Gibson, A. L. Hughes and Kirby Reichmann, *constituted a majority of the Trustees* of the Madison Presbyterian Church, *elected by a majority of the congregation* of said church, at the time of the actions complained of by the plaintiffs in this cause." (Emphasis added) Therefore, application of neutral principles of law leads to the inescapable conclusion that the ownership and control of the local church property resides in Trustees of tne Madison Presbyterian Church elected by a majority of the congregation.

In so holding we collide with neither Watson v. Jones, supra, St. Johns Presbytery v. Central Presbyterian Church, supra, nor any of the other numerous cases relied upon by appellees. Application of the principles announced in those cases must necessarily be restricted to factually similar situations, none of which exist in the case sub judice.

In Watson v. Jones, the author of the opinion carefully recited that the subject church was originally organized "under the authority and as part of" the national organi-

zation and that the church property was purchased *after* its organization and therefore after it became a part of the national church. The trustees of the church [19] were thereafter incorporated. None of those characteristics are applicable to the Madison church. However, the most important distinguishing feature between Watson v. Jones and the case sub judice is the admission, as recited in the former opinion: "Though neither the deed nor charter said this in terms, it was admitted that both contemplated the connection of the local church with the general Presbyterian one, and subjected both property and trustees alike to the operation of its fundamental laws." [20]

St. Johns Presbytery v. Central Presbyterian Church, supra, is likewise distinguishable. There the affected church (Central Presbyterian Church of St. Petersburg) had been organized and established by the First Presbyterian Church of St. Petersburg from whence it received financial assistance and from whence it received a gift of the disputed property, the conveyance being to "Trustees of West Central Presbyterian Church of St. Petersburg and their successors without cost for the purpose of establishing a Presbyterian Church consisting of a number of professing Christians, with their offspring voluntarily associated together, for divine worship and Godly living, agreeable to the Holy Scriptures, and submitting to the government and discipline of the Presbyterian Church in the United States as contained in the Book of Church Order." The church was thereafter incorporated as "Central Presbyterian Church of St. Petersburg", the charter of which the writer of the opinion recited "provides that membership therein shall be governed by the Book of Church Order of the Presbyterian Church. The Book of Church Order further provides for management of the affairs of the church or the

[19] So states the author of the opinion.

[20] 80 U.S. at page 683.

corporation which could be rescinded or modified only by the Presbytery of the Presbyterian Church in the United States." That Justice Terrell, the writer of the opinion, was of the view that those facts were necessary and important to the opinion and decision in that case clearly reflected by the manner in which the facts are recited in the opinion distinguishing Reid v. Barry, supra, and by the statement by which he concluded, viz: "Overlooking this, the Chancellor fell into error." [21]

Because they are factually dissimilar, albeit church property schisms and disputes are involved, the other cases relied upon by appellees [22] are also inapplicable.

Appellants also persuasively argue that facts and law are separate and distinct and that although numerous cases involving Presbyterian churches have recited that they are hierarchical rather than congregational in structure such determination is not law but is factual and therefore dependent upon the evidence adduced in a particular case. Certainly we agree that whether a particular church, whatever its denomination, is hierarchical or congregational is a matter of fact and not of law and a matter of which a court may not properly take judicial notice. However, although we are fully cognizant that substantial evidence was adduced in the case sub judice tending and intended to prove that the Madison Presbyterian Church at Madison, Florida is congregational rather than hierarchical of the case on the other grounds already announced, to wander into that thicket.

For the same reason it is unnecessary for us to address appellants' fourth point by which they urge that the trial

[21] 102 So.2d 719.

[22] Presbytery of the Everglades v. Morgan, 125 So.2d 762 (Fla. 3d DCA 1961); Froelich v. Rowley, 102 So.2d 720 (Fla. 1958); Nealey v. Butler, 187 So.2d 658 (Fla. 3rd DCA 1966); First Continuing Presbyterian Church of Wauchula, Florida, Inc. v. Westminister Presbytery, 316 So.2d 663 (Fla. 2d DCA 1975); Ferguson v. Poitier, 306 So.2d 212 (Fla. 4th DCA 1975) and Adickes v. Adkins, 215 SE 2d 442 (S.C. 1975).

court impermissibly and unconstitutionally admitted into evidence, considered and relied upon ecclesiastical pronouncements, declarations and documents, a substantial number of which are referred to in the final judgment here appealed.

Having determined that under the evidence of this case the property of the Madison Presbyterian Church at Madison, Florida is not impressed with any trust, implied or express, it necessarily follows that title and right of control are in the representatives of the local church, the appellant Trustees,[23] and that the representatives of the hierarchy of the PCUS, the appellees here, have no interest therein.[24]

REVERSED AND REMANDED with directions to enter judgment in favor of the defendants in the trial court, appellants here, not inconsistent with the views herein expressed.

RAWLS, J., CONCURS. SMITH, J., DISSENTS.

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[23] See Presbyterian Ch. In U.S. v. Eastern Heights Pres. Ch., 167 SE 2d 658 (Ga. 1969), wherein that court determined the place of title of church property after holding the property to be free of an implied trust following remand by the United States Supreme Court in Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra. As stated in Footnote (14) supra, certiorari was denied by the United States Supreme Court at 396 U.S. 1041 (1970). Consideration of the holding of that case leads to the conclusion that since Erie R. Co. v. Tompkins, supra, the implied trust doctrine announced in Watson v. Jones, supra, is not "commonlaw" binding on the states but that whether a state adheres to such theory is a matter to be decided by the courts or legislature of the states involved.

For a complete discussion of the current status of the implied trust doctrine in Florida and the remainder of the United States, please see the annotation found at 52 ALR 3d 324.

[24] As elsewhere recited in this opinion, the basis of the plaintiffs' cause of action was an alleged "trust originally imposed upon said property" and, as recited in Footnote (9) above, such was the foundation of the Final Judgment here appealed: That basis and foundation having failed, reversal is required.

SMITH, J., dissenting:

In my judgment the majority decision departs from the well-settled rule of Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871) and St. Johns Presbytery v. Central Presbyterian Church, 102 So. 2d 714 (Fla. 1958).

We are considering several deeds unto the "Trustees of the Presbyterian Church at Madison." We are also considering bank accounts, securities and personal property owned and held by "the Madison Presbyterian Church." Our task here, at least in part, is to identify the congregation which is "the Presbyterian Church at Madison." My colleagues point approvingly to "the representatives of the local church," meaning appellants, but they do not demonstrate that appellants and their allies, rather than appellees Ragans and Beck and theirs, are that "local church." Their decision contradicts that of the ecclesiastical courts of the Presbyterian Church in the United States (PCUS), to whose authority all these persons have until recently submitted, which have identified the Presbyterian Church at Madison as the congregation here represented by appellees Ragans and Beck.

In a hierarchical organization such as PCUS—there being no basis in law or fact to disturb the chancellor's finding that PCUS is indeed hierarchical—authority to identify the local congregation is in the hierarchy. Contrary to the explicit command of the First Amendment, as made applicable to the States by the Fourteenth, the majority here undertake to overrule, as a matter of civil law, PCUS' determination of that purely ecclesiastical matter. If a majority of the Madison congregation may declare themselves free of allegiance to PCUS and, as the seceded "local congregation", make their claims to church property effective by mandate of a civil court,

then every such majority's secession with property would succeed. The distinction between congregational and hierarchical churches, long recognized by the churches themselves, by all their members, and by volumes of law would be rendered meaningless. I believe the majority's decision accomplishes just that, contrary to *Watson* v. *Jones*:

> ". . . [W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." 80 U.S. at 727, 20 L.Ed. at 676;

and contrary to *St. Johns Presbytery*:

> "It matters not whether those who withdraw from the mother church constitute a majority of a minority faction, the church property remains with the mother church. There are exceptions to this rule when the schism occurs in a church whose government is congregational in form like the Baptist or Congregational denominations but in churches bound together by associated ecclesiastical government when the local church is obedient to a larger or more important religious organization and is governed by it, such as the Presbyterian, Catholic, Episcopal, Methodist and Lutheran, I have found no exception to this rule. They could not function under any other rule." 102 So. 2d at 718.

Attempting to distinguish their decision from the great number of cases holding that a local group may not

withdraw from a hierarchical religious body and convert church property to its own use, the majority give controlling effect to the fact that one parcel of land was acquired in the name and for the use of the Madison Presbyterian Church in 1851, before the congregation's affiliation with PCUS. No implied trust in favor of PCUS could attach to the property at conveyance, the majority reason, because PCUS was not then in existence. Further, the majority discern no "subsequent document nor understanding" dedicating the church property to the use and discipline of PCUS. That reasoning is unconvincing on several grounds:

First, the majority do not account for real property acquired by the Madison Presbyterian Church in 1931, 1947, 1950, and 1965, long after the congregation affiliated with PCUS in 1861, or for personal property acquired by the Church since that date. Under the majority's own analysis, any such property falls squarely within the recognized rule of *Watson* and *St. Johns Presbytery*, and would be subject to the control of the congregation recognized by PCUS. The majority neither recognizes nor reconciles the consequent need, according to their analysis, for a Solomonic division of the church property. Plainly, the majority's implication is that the disposition of all real and personal property acquired by the congregation since 1861 is controlled by its disposition of "the primary church property," meaning the land acquired in 1851. Though the main edifice of the church was and may now be constructed on that property, there is no legal basis, let alone an ecclesiastical one, for embodying "the church" or its congregation as that building.

Secondly, although *Watson*, *St. Johns Presbytery* and several other decisions involved property acquired by a congregation after its affiliation with the hierarchical body, nothing in any of those opinions suggests that fact controls the outcome. Three of the cases dismissed

by the majority as "factually dissimilar" give no indication whether the property was acquired before or after the congregation's affiliation with the hierarchical body. Froelich v. Rowley, 102 So. 2d 720 (Fla. 1958); Ferguson v. Poitier, 306 So. 2d 212 (Fla. 4th DCA 1975); Adickes v. Adkins, 264 S.C. 394, 215 S.E.2d 442 (1975).

Finally, the majority's finding that there was no "understanding" affecting property between the congregation and PCUS ignores the character of the commitment made by the Madison Church when it affiliated with PCUS in 1861. Thereby, the Madison Presbyterian Church adopted the constitution of PCUS—the Confession of Faith and Book of Church Order—and submitted itself to the discipline and authority of the higher courts of PCUS. That commitment was total and without reservation. Nothing in it suggests a purpose to except any or all of the property here contested. In Reformed Bethanien Church v. Ochsner, 72 S.D. 150, 31 N.W.2d 249 (1948), the Supreme Court of South Dakota dealt with contentions similar to those adopted here by the majority. There, as here, the "local congregation"—the Reformed Bethanien Church in Scotland, South Dakota—acquired land for a church building before affiliating with the hierarchical church with which it later contended. There, as here, it was suggested that property acquired by the Scotland congregation prior to affiliation with the Reformed Church was exempt from the congregation's commitment to the authority of the church at large, and so was subject to the later claims of a majority of the local congregation. The court rejected that contention, holding:

> "We perceive no reason for arriving at a different conclusion with reference to property held by the local unit prior to its affiliation. In the absence of a specific understanding or agreement preserving a separate entity and expressing an intention to withhold its property, we think it must be presumed by voluntarily merging itself as an organ of the larger body, it intended to dedicate its all to the purposes of that body. Such existence as it has had since this fusion is as but a part or member of a whole, and that which is held by or for it is held by or for the whole." 72 S.D. at 159-60, 31 N.W.2d at 254.

I conceive that the Madison congregation also committed "its all" to the authority and discipline of the Presbyterian Church in the United States.

In 1861 and for a time afterwards, it might well have been argued, as the majority here suggests, text at n. 16, that the Madison congregation's withdrawal from the Presbyterian Church in the United States of America (PCUSA) was ineffective to deprive that hierarchical church, and any remaining congregation in Madison which was loyal to it, of the beneficial use and ownership of the Madison church property. Surely the claims of PCUSA at that time were quite as legitimate, under the *Watson* rule, as those of PCUS today. Obviously the potential claim of PCUSA was frustrated by the ravages of a great war, PCUSA's consequent lack of access to a judicial remedy and the absence in Madison of a loyal congregation. Whatever may have been the merits of PCUSA's latent claim 116 years ago, it is now barred. The work and faith of successive generations of Madison Presbyterians born or converted to, baptized and married in, and buried from the Madison church long ago legitimated the 1861 commitment of the congregation and its property to the doctrine and authority of PCUS. Norton v. Jones, 83 Fla. 81, 90 So. 854 (1922); Greek Catholic Church of St. Michaels v. Archbishop Platon Roizdestvensky, 67 Colo. 217, 184 P. 295, 18 A.L.R. 690 (1919). Cf. Van Meter v. Kelsey, 91 So. 2d 327 (Fla. 1956).

In short, I believe the chancellor was correct in holding:

> "When the individual Defendants [appellants] withdrew from the Presbyterian Church US and organized themselves into a separate and independent organization, they carried nothing but their membership with them, and the property remained with the Presbyterian Church US through its respective courts."

I would affirm.

APPENDIX C

IN THE CIRCUIT COURT,
THIRD JUDICIAL CIRCUIT,
IN AND FOR MADISON COUNTY, FLORIDA

Civil Action No. 73-100

CRAIG MILLS, Et Al.,
Plaintiffs,

vs.

JOHN P. BALDWIN, Et Al.,
Defendants.

FINAL JUDGMENT

THIS CAUSE came on for non-jury trial before the Court on Plaintiff's First Amended Complaint and upon the Counterclaim of the individual Defendants. The Plaintiffs are Trustees of the Presbytery of Florida of the Presbyterian Church in the United States; members of the Administrative Commission of the Presbytery of Florida of the Presbyterian Church in the United States; and persons recognized by the Presbytery of Florida of the Presbyterian Church in the United States as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida.

The Defendants are John Baldwin, individually and claiming to be Moderator of the Session of the Madison Presbyterian Church in Madison, Florida; and other persons claiming to be members of the Session of the Madison Church. They will hereinafter be referred to as "individual Defendants." The Florida First National Bank at Madison, Florida is also a party defendant, and will hereinafter be referred to as "the Defendant Bank."

Suit was brought by Plaintiffs herein in their official capacities as hereinabove set forth and on behalf of the Presbyterian Church in the United States which is an unincorporated ecclesiastical organization devoted to the Presbyterian faith.

This controversy revolves about the ownership of the real property upon which certain church buildings are located, together with certain personal property. The Plaintiffs allege that the Madison Presbyterian Church in Madison, Florida, hereinafter called "the Madison Church," having been previously organized as early as 1840, was thereafter formed and constituted as a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church in the United States, hereinafter referred to as the "Presbyterian Church US." Plaintiffs further allege that the real property acquired by the Madison Church through the years has been continuously used for the purpose of providing a home for the minister, and for the common use by members of the Madison Church as a place of divine worship subject always to the government and discipline of the Presbyterian Church US.

Plaintiffs assert that the beneficial ownership of the property of the Madison Church rests with Plaintiffs and those members of the congregation of said church who remain faithful to the body of the Presbyterian Church US and that under the government and discipline of the Presbyterian Church US, there can be no such thing as a unilateral withdrawal by a congregation from the Presbyterian Church US without consent of the Presbytery in whose geographical bounds the individual church is situated. Plaintiffs sought injunctive and general relief.

The individual Defendants-Counterclaimants generally denied that the Madison Church was formed according to the ordinances and government of the Presbyterian Church US and denied that the Madison Church was

subject to and governed by the rules, doctrine and discipline of the Presbyterian Church US. The individual Defendants-Counterclaimants also prayed for injunctive and general relief.

The Defendant Bank by answer to the Complaint filed by Plaintiffs affirmatively alleged that certain bank accounts were maintained by the Madison Church in that bank, and the Defendant Bank asserted that it would abide by any orders entered by this Court with respect to the ownership of any funds in the bank's possession.

Upon examination of the pleadings, and after consideration of the testimony and exhibits offered at the trial of this cause, and having heard argument of counsel for all parties and the Court having read and considered the Briefs filed on behalf of the Plaintiffs and individual Defendants and being otherwise fully advised in the premises, the Court makes the following findings of fact:

1. The Presbyterian Church US is an unincorporated ecclesiastical organization governed by the Presbyterian system of government comprising approximately 950,000 members located primarily in the Southeastern section of the United States. Its constitution consists of its doctrinal symbols embraced in the Confession of Faith and the Larger and Shorter Catachisms, together with the Book of Church Order, which comprise the Form of Government, the Rules of Discipline, and the Directory of Worship.

2. The Presbyterian Church US is governed by Presbyters or Elders, gathered in Church Courts, each with specific jurisdiction. It was organized on or about December 4, 1861, at which time it was called "the Presbyterian Church in the Confederate States of America." Under its form of government, the entire governmental power of the denomination is vested in church courts, or judicatories, consisting of the Session which has jurisdic-

tion over affairs pertaining to a single congregation; the Presbytery having jurisdiction over a certain district comprising several congregations; the Synod having jurisdiction over a still larger district including several Presbyteries; and the General Assembly having jurisdiction over the affairs pertaining to the entire church.

3. The Presbyterian Church US is not congregational in organization, but is clearly hierarchical or representative. *St. Johns Presbytery* v. *Central Presbyterian Church*, 102 So.2d 714, *Presbytery of the Everglades* v. *Morgan*, 125 So.2d 762, *Froelich* v. *Rowley*, 102 So.2d 720.

4. The Madison Church was formed and constituted a church on or about December 4, 1861 according to the ordinances and government of the Presbyterian Church US (previously called the Presbyterian Church in the Confederate States of America) by authority of the Presbytery. During the period between 1851 and 1865 it acquired certain real property situated in Madison County, Florida and duly recorded in the Public Records of Madison County as set forth below:

A. Deed Book "G" at page 59

B. Deed Book 46 at page 375

C. Deed Book 67 at page 542

D. Deed Book 72 at page 349

E. Official Records Book 36 at page 77

5. The real property was acquired by the Madison Church in the name of its Trustees as provided in the Book of Church Order which authorized title to be held by either incorporated or unincorporated churches, and all of said property was thereafter used by the Madison Church for the purpose of providing a home for its minister and for divine worship.

6. All persons including the individual Defendants who were received as members of the Madison Church took certain vows, including a vow to submit themselves to the government and discipline of the church and were also required to affirm their approval of the government and discipline of the Presbyterian Church US.

7. That the Presbytery of Florida of the Presbyterian Church US is fully authorized under the constitution of the Presbyterian Church US with authority to act on its behalf. The Presbytery is specifically clothed under the Constitution of the Presbyterian Church US with power to receive, dismiss and dissolve churches.

8. On or about March 11, 1973 the Defendant John Baldwin moderated a congregational meeting called by the Session at which a Petition was adopted by a vote of 83 in favor of said Petition and 17 in opposition thereto. The Petition was addressed to and forwarded to the Presbytery of Florida, requesting the Presbytery to dismiss the Madison Church and its property from the Presbytery of Florida and to dismiss and dissolve the pastoral relationship between the Defendant Baldwin and the Presbytery of Florida and the Presbyterian Church US. The Petition was referred by the Presbytery to a committee for further study.

9. On or about May 9, 1973 the Synod of Florida adopted a motion requiring the Presbyteries within the Synod to appoint a commission to visit, counsel, and advise any church within each Presbytery seeking to withdraw from said Presbytery. The Synod also required the Session of any such church within its bounds to notify Presbytery of its intention to hold a congregational meeting on the issue of withdrawal and to wait for a period of ninety (90) days prior to the holding of such meeting.

10. The Presbytery of Florida appointed certain persons as members of an Administrative Commission and

the Commission forwarded a communication to the Madison Church convening a meeting at the Madison Church on May 24, 1973. The individual Defendants sent a telegram to the Administrative Commission rejecting the authority of the Commission.

11. In defiance of the aforesaid action of the Synod of Florida, the individual Defendants called and held a congregational meeting on May 20, 1973 at which time a Resolution was adopted by a vote of 74 in favor and 29 in opposition by which the Madison Church purported to unilaterally withdraw from and sever all relationship with the Presbytery of Florida and the Presbyterian Church US.

12. Thereafter, on or about June 5, 1973 the Presbytery of Florida granted the request of Defendant John Baldwin and dropped his name from the roll of the Presbytery of Florida and dissolved the pastoral relationship between the Defendant Baldwin and the Madison Church and declared the pulpit vacant. The Presbytery accepted a Petition of certain loyal members of the Madison Church to be recognized as members of the Madison Church and declared and recognized Plaintiffs Beck and Ragans and others as the Ruling Elders and members of the Madison Church with full authority to assume control of the congregation and its property.

13. On or about January 29, 1974 the Presbytery of Florida denied the Petition requesting dismissal of the Madison Church from the Presbytery and from the Presbyterian Church US. No appeal or review of any kind was filed by the individual Defendants from this decision and accordingly the action of the Presbytery became final and binding under the Constitution of the Presbyterian Church US.

14. In its original Petition adopted March 11, 1973 and forwarded to the Presbytery of Florida, the con-

gregation of the Madison Church acknowledged their affiliation with the Presbyterian Church US and expressed the view that their Petition for dismissal should be processed in a manner consistent with the Constitution of the Presbyterian Church US.

15. The General Assembly of the Presbyterian Church US has officially adopted several declaratory statements construing and interpreting the Book of Church Order. Among those declarations may be found the following:

A. That the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independency.

B. That disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the church.

C. That the beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation with respect to such property may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church US as established by the constitution of such church.

16. The individual Defendants and other withdrawing members of the Madison Church have, since prior to the filing of this suit and continuously thereafter failed to recognize the rights of the Plaintiffs to exercise any

authority or control over the real and personal property to which Plaintiffs are entitled under the Constitution of the Presbyterian Church US and the laws of the State of Florida.

CONCLUSION

1. This Court has jurisdiction over the parties and over the subject matter.

2. That a state may adopt any one of several approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship of the tenets of faith. *Maryland & Virginia Eldership* v. *Church of God at Sharpsburg*, 396 U.S. 367, 24 L.Ed.2d 582, 90 S.Ct. 499; *Watson* v. *Jones*, 13 Wall 679, 20 L.Ed. 666; *St. Johns Presbytery* v. *Central Presbyterian Church of St. Petersburg*, 102 So.2d 714.

3. That a state may enforce the property decisions within a church of hierarchical polity by the highest authority which has ruled upon the dispute unless express provisions in the deed of conveyance condition the property's use in a specified manner. *Maryland & Virginia Eldership* v. *Church of God*, supra.

4. When a church is representative, republican, episcopalian or hierarchical in government, the church property, whether held by an express or an implied trust cannot be diverted from the parent church by those who withdraw from it and form a separate denomination. *Nealey* v. *Butler*, 187 So.2d 658; *St. Johns Presbytery* v. *Central Presbyterian Church of St. Petersburg*, supra; *Presbytery of the Everglades* v. *Morgan*, 125 So.2d 762; *Froelich* v. *Rowley*, 102 So.2d 720.

5. In the absence of fraud, collusion or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are

accepted in litigation before the secular courts as conclusive. *Presbyterian Church* v. *Hull Church*, 393 U.S. 440, 21 L.Ed.2d 658, 89 S.Ct. 601, *St. Johns Presbyterian Church*, supra.

6. Record title to the property in dispute is held by the trustees of Madison Church of Madison, Florida, for those persons recognized as members of that particular church by the respective courts of the Presbyterian Church US subject to an implied trust in said property for the uses and purposes of those belonging to and professing to be members of the Presbyterian Church US. *Presbytery of the Everglades* v. *Morgan*, supra; *St. Johns Presbytery* v. *Central Presbyterian Church*, supra.

7. When the individual Defendants withdrew from the Presbyterian Church US and organized themselves into a separate and independent organization, they carried nothing but their membership with them, and the property remained with the Presbyterian Church US through its respective courts. It made absolutely no difference that the withdrawing members constituted a majority of the congregation of Madison Church. *St. Johns Presbytery* v. *Central Presbyterian Church*, supra, and cases cited therein.

IT IS THEREFORE, ORDERED AND ADJUDGED that the title and possession of the real property hereinabove described is in the Madison Presbyterian Church in Madison, Florida, subject to an implied trust for the use and benefit of the Presbyterian Church in the United States. The individual Defendants have withdrawn their membership from the Presbyterian Church in the United States and may exercise no powers of office or membership therein in any way relating to the use or possession of the real property except as they may be authorized by the Presbyterian Church in the United States through its respective Church Courts.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants and all other persons in association with them having knowledge of this Judgment be and they are hereby permanently enjoined and restrained from interfering with the Plaintiffs and other loyal members of the Presbyterian Church in the United States in the use of the real or personal property of said Madison Presbyterian Church for the purpose of worship according to the doctrines, government, discipline and rules of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants be and they are hereby permanently enjoined from using or attempting to use the real property of the said Madison Presbyterian Church for purposes of divine worship or for any other purpose except in conformity with and subject to the government and discipline of the Presbyterian Church in the United States.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants shall forthwith deliver, transfer and assign any money, funds, bonds, securities or other property belonging to the Madison Presbyterian Church which was in their possession or under their control as of May 14, 1975 to the Plaintiffs, Oscar Beck, Jr. and Henry Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendant shall forthwith deliver and transfer all books of account, financial records and church records in any way pertaining to the Madison Presbyterian Church to the Plaintiffs, Beck and Ragans.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant John Baldwin and the other individual Defendants be and they are hereby enjoined and restrained from using, occupying or residing in the prop-

erty of the said Madison Presbyterian Church designated as the manse, or from occupying the pulpit of the church property except as they may otherwise be authorized to do so by the Plaintiffs Beck and Ragans and any other persons recognized by the Presbytery of Florida as constituting the Church Sessions of the Madison Presbyterian Church in Madison, Florida.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant Florida First National Bank at Madison shall forthwith cause an accounting to be made of any and all funds on deposit with said bank in the name of Madison Presbyterian Church in Madison, Florida as of May 16, 1975. Said bank shall forthwith assign, transfer and set aside such of said funds in its possession in an amount equal to the amount of deposit as of May 16, 1975 together with any interest earned on that sum of money to the present date to the Plaintiffs Beck and Ragans. Any funds or monies left over shall be paid by said bank to such persons as may be designated by the individual Defendants.

IT IS FURTHER ORDERED AND ADJUDGED that the individual Defendants-Counterclaimants shall take nothing by their counterclaim and shall go hence without day.

IT IS FURTHER ORDERED AND ADJUDGED that the Court retains jurisdiction of the parties and the subject matter of this action to enter such other and further orders as may be necessary or proper to enforce said Judgment, including the award of costs.

DONE AND ORDERED in Chambers at Perry, Taylor County, Florida this 16 day of May, 1975.

/s/ Royce Agner
ROYCE AGNER
Circuit Judge

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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1015

JOHN P. BALDWIN, et al.,
Petitioners,

v.

CRAIG MILLS, et al.,
Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

---

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

(A) Whether this Court has jurisdiction to review this case in view of the fact that the basic holding of the Supreme Court of Florida was that purely as a matter of state law, an implied trust existed in the local church in favor of the hierarchical mother church, and such holding violates no constitutional principles.

(B) In the alternative, assuming that the ruling below had a constitutional basis, whether the First Amend-

ment, as interpreted by this Court beginning with *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1872), and continuing through *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), requires civil courts to defer to the determination by a hierarchical church court as to the identity of the local congregation, where such a determination is essential to the resolution of a property dispute between two factions of a local church.

STATEMENT OF THE CASE

On August 7, 1973 Respondents as plaintiffs below filed a complaint in the Circuit Court for Madison County, Florida. The Respondents were Trustees of the Presbytery of Florida of the Presbyterian Church in the United States ("PCUS"), members of the Administrative Commission of the Presbytery of Florida, and certain persons officially recognized by the Presbytery of Florida as constituting the Church Session of the Madison Presbyterian Church in Madison, Florida. Petitioners as defendants below were persons claiming to be members of the Church Session, and its minister, and the Florida First National Bank at Madison, a bank holding funds on deposit in the name of the church. By their complaint, plaintiffs prayed that the individual defendants and all others associated with them be restrained from interfering with plaintiffs and other loyal members of PCUS in the use of the church property.

The Madison Presbyterian Church was founded in 1840 and throughout its history has accumulated both real and personal property. It has never been incorporated, and title to its property has always been held by trustees elected by the congregation. On March 11, 1973 the defendant John P. Baldwin, who was then the regular ordained and installed pastor of the Madison Church presided over a congregational meeting. Upon a vote taken at such meeting, a petition was adopted requesting

the Presbytery of Florida to dismiss the local church and its property from the Presbytery of Florida to an independent and autonomous congregation, and to dismiss and dissolve the pastoral relationship between the defendant John Baldwin and the Presbytery of Florida and PCUS.[1]

The Petition was referred by the Presbytery of Florida to a Commission of the Presbytery for study and recommendation for action upon the Petition. Thereafter, upon recommendation of the Administrative Commission, the Presbytery denied the Petition of the majority of the Madison Church to be dismissed with its property from the Presbytery of Florida. No appeal or review was ever taken from that action, and, accordingly, the action of the Presbytery became final. (Pet. App. C-5-6.)

Thereafter, on May 20, 1973, a resolution was adopted by the congregation of the Madison Church upon a vote of 74 in favor and 29 in opposition by which Petitioners unilaterally purported to withdraw from and sever all relationship with the Presbytery of Florida and PCUS. On June 5, 1973 the Presbytery of Florida removed John

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[1] The petition which was received in evidence as Plaintiffs' Exhibit 16 is of substantial importance because it clearly and unequivocably acknowledges the hierarchical relationship between the Madison Church and PCUS and acknowledges the ecclesiastical jurisdiction of the Presbytery of Florida over the Madison Church. The following excerpts are illustrative of this relationship:

1. We have serious problems of conscience because our membership in the Presbyterian Church, U.S. . . .
2. Were we to remain a part of the Presbyterian Church, U.S. . . .
3. We believe that the fair and charitable solution is to be dismissed from the Presbytery of Florida in a manner consistent with the Constitution of the church.
4. Therefore, we, the congregation of Madison Presbyterian Church, Madison, Florida, do respectfully petition the Presbytery of Florida to dismiss us with our property as of the conclusion of Presbytery meeting April 10, 1973.

Baldwin's name from the pastoral roll of the Presbytery because he had renounced the jurisdiction of PCUS, and declared the pulpit of the Madison Church to be vacant. The Presbytery thereafter declared and recognized plaintiffs Beck and Ragans and others as constituting the Church Session of the Madison Church with full authority to assume control of the congregation and all land, buildings, personal property and monies of the Madison Church. No review of that action was ever sought by the defendants, and such action accordingly became final and binding upon the parties.

The trial court held that PCUS is clearly hierarchical or representative in its government, with governmental power being vested in church courts or judicatories consisting of the Session which has jurisdiction over affairs pertaining to a single congregation; the Presbytery having jurisdiction over a certain district comprising several local congregations; the Synod having jurisdiction over a still larger district including several Presbyteries; and the General Assembly having jurisdiction over the affairs pertaining to the entire denomination. That holding was not disturbed by the District Court of Appeal, and it was affirmed by the Supreme Court of Florida.

Finally, the trial court held that the actions of the Presbytery of Florida were binding decisions of the church court having jurisdiction over the subject matter, and that it would defer to certain declaratory statements of the General Assembly of the Presbyterian Church in the United States which provided, among other things, that:

1. The Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independency.
2. The disposition of the property of a particular church rests in the will of the congregation of that church; and that *the congregation is that body of persons recognized as members of that particular church by the respective courts of the church.* [Pet. App. C-7; emphasis added.]

The italicized portion of this holding was based squarely upon an interpretation of the Book of Church Order by the PCUS General Assembly, which was made part of the record in the case as Exhibit 26.

The District Court of Appeal reversed the trial court. However, the Supreme Court of Florida, consistent with a series of prior decisions following the doctrines announced by this Court in *Watson, supra* and its progeny, reversed the District Court of Appeal and affirmed the final judgment of the trial court, observing that:

> . . . a careful reading of the cases makes clear that the issue in a case such as this is not who owns the property. The Madison Presbyterian Church of Madison, Florida owns the property. The true issue is—who represents the Madison Presbyterian Church? The authorities from *Watson* v. *Jones* forward clearly respond that Petitioners [Respondents here] represent that church because of the structure and government of PCUS. [Pet. App. A-12.]

On September 28, 1978 the Supreme Court of Florida denied rehearing, and this Petition for a Writ of Certiorari followed.

REASONS FOR DENYING THE WRIT

I

The opinion of the Supreme Court of Florida can be read as no more than a holding that under state law, an implied trust over local church property arises in favor of a hierarchical church that has the structure of PCUS. If so read, the Florida Supreme Court has decided this case on state law grounds, and this Court does not have jurisdiction to review the decision below.

II

In view of the fact, however, that the Supreme Court of Florida agreed with Judge Smith's dissent in the District Court of Appeal, and Judge Smith placed emphasis upon the rule of deference to church court decisions, the Supreme Court of Florida may have reached the result it did because of the church court decision in effect here. Since the deference rule is a constitutional one, this Court would in that instance have jurisdiction to decide the case. For purposes of argument, the remainder of this Brief in Opposition will assume, for the most part, that the Florida Supreme Court's ruling was based upon constitutional premises.

A.

Petitioners begin by asserting that if certiorari is granted, they intend to show that the historical background and other circumstances surrounding this case are unique and substantially different from the facts involved in other church property disputes. They suggest that PCUS contributed no funds to the local congregation (Pet. at 10), while conceding that the Presbytery of Florida did contribute funds in the early years of the Madison Church's history for support of its ministry among other local churches. (Pet. at 4.)

However, the contribution of funds from a hierarchical church to a local congregation is not a controlling question even under state law. See *Kelley* v. *Riverside Blvd. Independent Church of God*, 44 Ill. App.3d 673, 358 N.E.2d 696 (1976). If the Supreme Court of Florida determines as a matter of state law that the presence or absence of such contributions is either controlling or persuasive in determining whether an implied trust exists in favor of the hierarchical denomination, it may do so consistent with First Amendment principles.

Petitioners also argue that the congregation of Madison Church was in existence before the Presbytery of Florida or PCUS came into being (Pet. at 11), although the significance of this point is nowhere explained. The Madison Church was formed in the year 1840, at which time there was one main body of Presbyterianism which was called "the Presbyterian Church in the United States of America." Thereafter, in 1861 the Presbytery of Florida met at the Madison Church and unanimously adopted a resolution severing its affiliation with the Presbyterian Church in the United States of America and concurring in the call for commissioners for the organization of a General Assembly with power to organize a new denomination. The Madison Church sent a delegate to the meeting of that General Assembly in 1861, at which time a resolution was unanimously adopted by which a new denomination was formed by the name of "the Presbyterian Church in the Confederate States of America," and which new denomination adopted the Constitution of the Presbyterian Church in the United States of America subject only to the change in name. Thereafter, the name of the denomination was changed to "the Presbyterian Church in the United States." Accordingly, the Madison congregation fully participated in the actions which took place over a hundred years ago.

But Petitioners fail to consider the obvious fact that the Madison congregation as it existed when this case was tried below is not the same "congregation" that it once was. The composition of local congregations is constantly changing as members die, move to other churches and new members are received into membership. The trust impressed upon the church property is not for the benefit of persons who are deceased or who have transferred their membership to other churches, but rather for the benefit of those who comprise the present membership of the congregation from time to time. So long as the congregation

in existence at the time the schism occurred in 1861 was one which submitted to the discipline and government of PCUS, and that affiliation still existed at the time of the withdrawal in 1973, it is wholly immaterial that other persons comprised the congregation of Madison Church prior to the formation of PCUS. Judge Smith in his dissenting opinion for the District Court of Appeal said it well:

> Whatever may have been the merits of PCUSA's latent claim 116 years ago, it is now barred. The work and faith of successive generations of Madison Presbyterians born or converted to, baptized and married in, and buried from the Madison church long ago legitimated the 1861 commitment of the congregation and its property to the doctrine and authority of PCUS. [Pet. App. B-21.]

This is the very issue upon which the majority of the District Court of Appeal became embroiled and which was ultimately put to rest by the Supreme Court of Florida, when it observed:

> . . . The fact that PCUS was formed by the succession of Presbyterian churches in the confederacy, a generation after organization of the Madison church, affects not at all the commitment of the Madison Presbyterian Church to PCUS in 1861 and continuously for generations thereafter. [Pet. App. A-12.]

III

Florida courts have consistently applied the rationale expressed by this Court in *Watson, supra*, 80 U.S. at 727, that:

> The rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them. . . .

It may be well to reflect upon the basis for this Court's holding in *Watson*, for the principle enunciated there is well reasoned. The form of government in a hierarchical ecclesiastical denomination may be easily ascertained and particularly so in the Presbyterian form of church government. This graduated system of church courts with original and exclusive jurisdiction subject to review and control by the higher church courts is the genius of the Presbyterian form of church government, and it is this connectionalism which underlies the principles enunciated in *Watson*. That decisions of each church court are subject to review and reversal by the courts above it is attended by such provisions in the Book of Church Order as Sections 4-1, 14-5, 16-7, 18-6(12), 19-3, and 114-1 through 114-4.

Property disputes between factions of a congregation affiliated with a hierarchical ecclesiastical denomination seldom involve a question of title, but rather a determination of those persons comprising the local congregation. It will almost always be a matter of identity, and the deference to ecclesiastical decisions on that question must of necessity be preserved for adjudication by church tribunals.

Florida courts, except for the holding by the District Court of Appeal whose decision was quashed by the Supreme Court of Florida, have uniformly held that, as a matter of state law, when the church is representative, republican or episcopal in government, the church property may not be diverted from the parent church by those who withdraw from it.[2]

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[2] See, *e.g.*, *Rev. Ferguson, et al.* v. *Rev. Poitier, et al.*, 306 So. 2d 212 (Fla. App. 1975); *First Continuing Presbyterian Church of Wauchula* v. *Westminister Presbytery*, 316 So.2d 663 (Fla. App. 1975); *Froelich* v. *Rowley*, 102 So.2d 720 (Fla. 1958); *Nealey* v. *Butler*, 187 So.2d 658 (Fla. App. 1966); *Presbytery of the Everglades* v. *Morgan*, 125 So.2d 762 (Fla. App. 1961).

St. John's Presbytery v. *Central Presbyterian Church of St. Petersburg*, 102 So.2d 714 (Fla. 1958), decided by the Supreme Court of Florida is widely regarded as the landmark decision in Florida on matters regarding disputes over church property. It follows explicitly the holding of this Court in *Watson*, and was subsequently cited by this Court in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 446 (1969). Moreover, one may search in vain for language in the decision and opinion of the Supreme Court of Florida in this case which is inconsistent with the pronouncement of this Court in *Watson, Serbian, Hull*, in *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94 (1952), or even in the concurring opinion for three members of the Court in *Maryland & Virginia Eldership* v. *Church of God*, 396 U.S. 367 (1970). Even if the implied trust issue could be deemed a constitutional one, and the Supreme Court of Florida be deemed in error in imposing such a trust, the question would still remain as to who represents the local church. That dilemma was squarely faced by the Supreme Court of Florida in *St. Johns Presbytery, supra*:

> If it could be held that no implied trust existed in favor of the Presbyterian Church in the United States the ecclesiastical question would then arise as to which faction engaged in the schism was the rightful representative or successor to the Central Church in its attempt to withdraw from affiliation with St. John's Presbytery and the Presbyterian Church but that question is not in the picture.
>
> If the question were here, its solution would involve the doctrine, discipline, ecclesiastical law, rule and custom of the Presbyterian Church. Such questions the courts will not attempt to resolve, even though property rights are involved, but will rely on the decision of them by the highest ecclesiastical court of the church. [102 So.2d at 719.]

Thus, without application of the implied trust doctrine in Florida, the result would have been the same because the minority members of the Madison congregation were formally recognized by the Presbytery to constitute the Madison Church.

B.

Petitioners' assault upon *Watson* as requiring an impermissible consideration of ecclesiastical doctrine is misguided, and their assertion that an inquiry into the structure and administration of an ecclesiastical body "inevitably results in the necessity of the court deciding questions of religious doctrine and practice" is simply not supported in the record. Careful examination of the opinion of the Supreme Court of Florida will reflect the care with which that Court was mindful of the admonition in *Maryland & Virginia Eldership* v. *Church of God*, *supra*, that:

> . . . the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious polity. [396 U.S. 370.]

PCUS has its own Constitution, which consists, among other things, of the Book of Church Order. (Plaintiffs' Exhibit 1.) This Book of Church Order comprises the form of government and discipline used throughout the denomination. It provides for the creation, composition, power and duties of each level of church court or judicatory. There is no uncertainty, no confusion and no dispute with respect to the form of Presbyterian government; nor is there any need for a civil court to engage in an "extensive" inquiry into religious law and polity to determine where church governing power resides within the hierarchical structure of the denomination.

Section 16-7 of the Book of Church Order (Plaintiffs' Exhibit 1 at 46) provides that:

The Presbytery has power:

* * * *

(7) to organize new churches

(8) to receive and dismiss churches

(9) to dissolve churches

* * * *

It was unnecessary for the trial court to inquire further as to the church court having jurisdiction over the request of Petitioners to be dismissed from Presbytery with their property, and it was not necessary to go beyond or outside the Book of Church Order to determine the hierarchical structure of PCUS.

Petitioners represent to the Court that they "have no quarrel with this Court's decision with regard to issues of internal church polity or questions of faith and doctrine," citing *Serbian*,[3] and then go on to say that:

> The constitutional rule as summarized in the *Serbian* decision simply directs that the decisions of ecclesiastical tribunals *to which have been granted the jurisdiction and power to determine ecclesiastical disputes* within the denomination must be accepted but the mere existence of these tribunals without a determination that they have been clothed with the proper authority is not sufficient to make their decision binding upon the civil courts.[4]

In so doing, Petitioners demonstrate no cause for review by this Court, inasmuch as the trial court explicitly found the Presbytery of Florida to be clothed under the Constitution of PCUS with power to dismiss churches,[5] or to refuse to do so.

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[3] Petition at page 13.

[4] Petition at page 16 (emphasis in the original).

[5] See Pet. App. C-5 wherein the trial court found as a matter of law that: ". . . The Presbytery is specifically clothed under the Constitution of the Presbyterian Church US with power to receive, dismiss and dissolve churches."

Petitioners unnecessarily cloud the issues by asserting that the Respondents Beck and Ragans were "appointed" by the Presbytery to be members of the Session of the Madison Presbyterian Church. No such assertion was ever made, and Respondents never asserted that either the Presbytery or the Administrative Commission of the Presbytery had the power to make such an appointment other than as provided for under the Constitution of the Church. Respondents Beck and Ragans were duly elected to the office of Ruling Elder by majority vote of the Madison congregation prior to the actions of Petitioners, and were merely recognized and declared by the Presbytery to constitute the Session of the Madison Church following the unilateral withdrawal by Petitioners.[6]

Any notion that civil courts cannot and should not defer to decisions and determinations by hierarchical church courts in the resolution of disputes concerning the

---

[6] Respondent Beck testified at the trial of the case as follows:

"Q. Do you now hold any office in the Madison Presbyterian Church?

A. I hold the office of Ruling Elder.

Q. How were you selected to that office?

A. I was elected by nomination and majority vote of the congregation."

[R 133-134.]

* * * *

"Q. Mr. Beck, were you already a member of the Session of the Madison Presbyterian Church on March 11, 1973, when the petition was adopted by which Presbytery was requested to dismiss Madison Presbyterian Church and its property?

A. I was.

Q. Were you thereafter recognized and declared by the Presbytery of Florida, together with other persons, as a Ruling Elder and member of the Church session of the Madison Presbyterian Church?

A. Yes."

[R 141-142.]

identity of those members of a local congregation entitled to the use and control of church property must be considered in light of the propostion announced in *Watson* that:

> . . . The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. [80 U.S. at 728-29.]

C.

Petitioners argue that the Supreme Court of Florida's deference to the decisions of hierarchical church courts "totally subverts the principle of majority rule on which all other action of the church hierarchy is based." (Pet. at 12.) Such a position has a certain facial appeal, but it simply fails to provide an acceptable method of resolving the basic question of who represents the local congregation. Moreover, it wholly disregards the governmental structure of PCUS.

Chapter 30 of the Book of Church Order (Plaintiffs' Exhibit 1) does provide for the amendment of its provisions in the following manner:

1. The approval of the proposed amendment by the General Assembly and its recommendation to the Presbyteries.
2. The advice and consent of a majority of the Presbyteries.
3. The approval and enactment by a subsequent meeting of the General Assembly.

Thus, it may be seen that the jurisdiction of the respective church courts as provided for in the Book of Church Order may be amended by vote of the constituent members of the denomination serving through their church courts. If the hierarchical structure of PCUS wishes to modify the manner in which the identity of local congregations is determined, it may properly do so by amendment to its Constitution. That is wholly different, however, from the ability of a local congregation to unilaterally make this determination.

Moreover, Petitioners' assertion that a majority of the local congregation should be able to decide upon "who the local congregation is" effectively cuts through the very heart of Presbyterianism. If, as *Watson* teaches, Presbyterians are free to organize religious denominations and to create tribunals for the governance of its members, under what constitutional theory must it relinquish power to each congregation to identify those members constituting the local church?

Among the vows to which all communing members of the Presbyterian Church in the United States must affirmatively answer is the following:

> Do you submit yourselves to the government and discipline of the church, and promise to further its purity and peace? [7]

Such a solemn vow goes to the very core of Presbyterianism, and while the right of an individual to disassociate himself from membership in or allegiance to the denomination is not at issue here, the right of such persons to collectively withdraw *with the church property* by "majority vote" clashes head-on with the Book of Church Order.

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[7] See also the vows in Sections 4-1(2), 24-5, 27-6(4), 29-3, 29-3(4), 210-5(c)(5), 210-5(c)(4), 219-1 and 224-7.

To require, under constitutional grounds, every hierarchical denomination to yield to the wishes of a majority of each local congregation would completely subvert its structure and render its hierarchical structure sterile.

Nowhere in the Book of Church Order may the alleged right of a local congregation to withdraw with its property be found. That power simply does not exist within the government and discipline of PCUS, and the highest church court in the denomination has explicitly declared that the Book of Church Order makes no provision for unilateral withdrawal of a church to autonomy or independency. (Pet. App. C-7.)

Moreover, it is plain that no principle of "majority rule" exists under the Book of Church Order on which "all other action of the church hierarchy is based." (Pet. at 12.) For example, the advice and consent of three-fourths of the Presbyteries is required for approval of amendments to the Confession of Faith and Catechisms of the Church (§ 30-2(2)), and approval of three-fourths of the members of a particular Presbytery is required to waive certain requirements for ordination of ministers (§ 27-5). A two-thirds vote of the members present at a congregational meeting is required to implement a union with churches of certain other Presbyterian denominations subject to approval of Presbytery (§ 31-2), and by two-thirds vote of those members present at a meeting of the Presbytery, Presbyteries may unite with Presbyteries of certain other Presbyterian denominations subject to approval of the Synod (§ 32-2).

Neither the First Amendment nor *Watson* compels the establishment of hierarchical churches as suggested by Petitioners in the "Question Presented" on page 2 of their Petition. Hierarchical churches are established by people in the exercise of their First Amendment rights, and have continued to flourish and exist because their members want it so. There is more than an *implied* consent by members of PCUS to consent and submit to its govern-

ment and discipline. There is an explicit vow by which each member of the denomination expresses a willingness to be governed by the denomination which is wholly inconsistent with the notion that a majority of a local congregation may unilaterally divert the church property from those who remain faithful to their vows. (See n.7, *supra.*)

D.

After first arguing that the determination of whether a religious denomination is hierarchical or congregational is itself an ecclesiastical question (Pet. at 8), Petitioners then assert that the trial court erred in failing to hold that PCUS was "congregational with regard to its treatment and consideration of property ownership" (Pet. at 8). Precisely the same argument was rejected following a review of the Book of Church Order by the Supreme Court of South Carolina in *Adickes* v. *Adkins*, 215 S.E.2d at 444 (1975).

The structure and government of PCUS has already been considered and decided by this Court [8] and the Supreme Court of Florida [9] to be hierarchical on previous decisions. Having themselves acknowledged the jurisdiction of the Presbytery by petitioning for dismissal with their property (Plaintiffs' Ex.. 16), Petitioners' argument here cannot be substantial.

But assuming, arguendo, that Petitioners had prevailed in their notion that PCUS was congregational "as to property," such a holding would only serve to highlight the basic question as to "who is the local congregation," and that question would have to be answered by deferring to the decision of the Presbytery of Florida which would lead to precisely the same decision reached by the Supreme Court of Florida.

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[8] *Hull, supra*, 393 U.S. at 441-442.

[9] *St. John's Presbytery, supra*, 102 So.2d at 716.

CONCLUSION

For the foregoing reasons, Respondents respectfully suggest that the Supreme Court of Florida did not err in reaching its decision, and there is no conflict with applicable decisions of this Court. The decision below may rest entirely on state law grounds. Even if it does not, the decision comports with the decisions of this Court and the overwhelming majority of other state court decisions on the subject. Accordingly, it would be in order for the Petition for Writ of Certiorari to be denied forthwith.

The case of *Jones* v. *Wolf*, 243 S.E.2d 860 (1978), *cert. granted*, U.S. No. 78-91, now before this Court, was tried before the Superior Court of Bibb County, Georgia, on a stipulation of facts, together with incorporated exhibits agreed to by both parties. Even though *Jones* was not decided on an implied trust theory, many of the issues there are present in this case, and *Jones* will afford this Court ample opportunity to deal with the principles of law sought to be reviewed by Petitioners here. Oral argument was held on January 16 before the Court, and the Court may wish to defer consideration of the instant Petition for a Writ of Certiorari pending its determination of the issues raised in *Jones*.

Respectfully submitted,

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